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TAPE S

RE: MUR 4766 -- Joint Response for Brown & Williamson Tobacco Corporation;
Lorillard Tobacco Company; Philip Morris Incorporated; R. J. Reynolds
Tobacco Company; and United States Tobacco Company

Dear Commissioners:

Respondents appreciate the opportunity to demonstrate why the Commission should find that there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended (FECA or "the Act"), has occurred or is about to occur, in connection with the issue ad campaign that is the target of this complaint.

The Commission will be able to see for itself from the ads (see attached) that the five tobacco companies (the "respondents") have not been and are not engaged in election-related activity. None of the ads contains "express advocacy" or even "electioneering." They do not mention¹ or depict any federal candidate. They do not favor or oppose, or urge a vote for or against any candidate or political party. The focus of every ad is the merits of comprehensive tobacco legislation, and the objective is to inform the public and, in turn, to persuade members of Congress to take certain actions with respect to such legislation.

We begin by describing, in Part I, the relevant factual background and by examining, in Part II, the peculiar -- and highly speculative -- nature of the allegations in the complaint. Part III.A. explains why, regardless of the legal standard applied to define so-called "in-kind

¹A few of the ads mention the name "McCain," referring to Senator John McCain, the sponsor of S. 1415. This is because of the fact that S. 1415 became known as the "McCain bill." See Affidavit of Lance Ian Morgan (the "Morgan affidavit") (Exhibit 69) at ¶ 9.

contributions," nothing in the complaint even comes close to suggesting that a violation of the Act has occurred. We then, in Part III.B., explain why this complaint, in seeking to silence one side of a public policy debate, is an abuse of the Commission's process and seeks to put the Commission in the untenable position of imposing an unconstitutional prior restraint.

I. RELEVANT FACTUAL BACKGROUND

Comprehensive federal legislation to regulate the tobacco industry has been and continues to be the subject of intense congressional and public debate. Since March of this year, the respondents have been publishing advertisements addressing the merits of such legislation in an effort to participate in that debate.

On June 20, 1997, state attorneys general, public health community representatives, attorneys for persons suing the tobacco industry and the respondents developed a comprehensive blueprint, which would have dramatically transformed the manner in which cigarettes and smokeless tobacco products are manufactured, marketed and sold in the United States (the "Proposed Resolution"). This agreement followed weeks of intensive negotiations by many parties, including Matthew Myers of the National Center for Tobacco-Free Kids, the complainant in this matter. The Proposed Resolution includes a detailed outline of proposed federal legislation and has no effect absent such legislation. Put simply, respondents agreed to support federal legislation embodying the terms agreed to in the Proposed Resolution.

Basically, the Proposed Resolution would mandate a total reformation and restructuring of how tobacco products are manufactured, marketed and distributed in the United States:

(1) by seeking to prevent underage access to, and dramatically reduce underage use of, tobacco products;

(2) by enacting Food and Drug Administration authority to regulate tobacco products under the Food, Drug, and Cosmetic Act, with certain provisions applicable to tobacco products;

(3) by mandating changes in the corporate culture of tobacco companies;

(4) by setting national requirements limiting smoking in public places (with State and local governments remaining free to set more stringent requirements);

(5) by requiring that the participating members of the tobacco industry pay hundreds of billion dollars to fund medical research; public education; cessation programs; health-care costs incurred by federal, state and local governments; and federal and state enforcement of the restrictions imposed by the Proposed Resolution;

(6) by preserving the rights of individuals to sue the tobacco industry; and

(7) by establishing a comprehensive regime of federal regulation and federal and state enforcement to implement these requirements.

Obviously, the issues addressed in the Proposed Resolution and in Congress's legislative response to this proposal were and remain of critical importance to the respondents. The enactment of such sweeping federal legislation fundamentally would affect virtually every aspect of the respondents' tobacco businesses.

Beginning in March 1998, the respondents determined that it was in their interests to participate fully and publicly in the policy debate over appropriate federal tobacco legislation. To that end, the respondents have published paid print, radio, and television advertisements that address the issues surrounding federal tobacco legislation.² See Exhibits 1 through 44 and Exhibits 70 through 72.

For example, in March of 1998, under the banner "The Tobacco Settlement," the respondents published Exhibit 1 in several major newspapers in support of federal legislation incorporating the provisions of the Proposed Resolution. The advertisement briefly set out the terms of the Proposed Resolution, discussed its benefits to the public and to the industry and concluded with the following:

We want to see the agreement become law. But not at the expense of adults who choose to use legal tobacco products, our shareholders, or the hundreds of thousands of Americans employed by the tobacco industry.

For example, some now are calling for immediate and massive increases in excise taxes on tobacco products. These taxes are not only unfair to millions of our customers, but also will have a devastating impact on the hundreds of thousands of people who work in our industry. Moreover, simply passing new excise taxes does nothing to further the comprehensive nature of the settlement.

All sides can find fault or favor with individual features of the settlement. But the President and Congress now have a unique opportunity to chart a new direction by passing comprehensive

²Philip Morris Incorporated ("PMUSA") is one of the five tobacco manufacturing companies participating in the publication of these advertisements. This response is being filed on behalf of those five manufacturing companies, including PMUSA. PMUSA notes that the complaint in this matter was served only upon Philip Morris Companies, Inc., the parent corporation of the Philip Morris family of companies, and not upon PMUSA. By filing this response, PMUSA is not waiving any objections to the inadequacy of service.

federal legislation on a national tobacco settlement. The whole of the settlement is much greater than the sum of its parts.

We're ready to work to make the agreement final and to put an end to decades of fruitless conflict, where no one wins.

Like all of the other ads, this ad contains no mention of any candidate for federal office, much less a call to vote for or against a particular candidate or party. Rather, the focus is exclusively on the public policy issues surrounding legislation pending before Congress. Furthermore, this early advertisement establishes the theme that runs through all of the ads published or broadcast by respondents: The respondents entered into the Proposed Resolution in order to achieve a comprehensive solution to tobacco issues in the United States. The respondents did not agree to huge tax increases and the problems they create.

On April 1, 1998, the Senate Commerce Committee favorably reported S. 1415 (the "McCain bill"). The McCain bill bore little resemblance to the terms of the Proposed Resolution. In the respondents' view, shared by independent analysts, the terms of the McCain bill would jeopardize the continued financial viability of the tobacco industry. In the days preceding the Senate Commerce Committee consideration of the McCain bill, the respondents offered the following critique of the bill:

The Commerce Committee proposal would put at risk all the benefits of the proposed tobacco resolution. It would also jeopardize the financial viability of the tobacco industry, cause economic dislocation among those who do business with tobacco companies, impose astronomical price increases on consumers, create a black market and potentially lead to prohibition. (March 30, 1998 Public Statement by the Tobacco Industry in Response to Senate Commerce Committee Tobacco Legislation.)

After the McCain bill was reported out of committee, the respondents concluded that there existed no reasonable chance for the passage of federal legislation bearing any relationship to the Proposed Resolution. In a speech to the National Press Club on April 8, 1998, RJR Nabisco Chairman and CEO Stephen F. Goldstone stated:

The extraordinary settlement reached on June 20th last year that could have set the nation on a dramatically new and constructive direction is dead, and there is no process which is even remotely likely to lead to an acceptable comprehensive solution this year. And by that I mean a comprehensive resolution that sets clear and understandable rules for the future, but acknowledges that tobacco companies have a legitimate right to exist in our country.

* * *

[W]e are going to speak out and engage in the public policy debate affecting our industry and our customers. . . . I pledge to devote much of my own time and my company's considerable resources to fostering a healthy, vigorous debate about the choices this country has about tobacco products. I have talked to the CEOs who lead the other companies in the industry, and I have no doubt they will join me in devoting their resources to raise these issues in every town across the country. The primary issue is taxation. Is it fair to increase the tax on cigarettes by huge amounts to pay for new federal spending programs or to provide tax cuts for wealthy Americans?

After the Goldstone speech, the respondents' ads continued to focus exclusively on the merits of the legislation. For example, on June 11, 1998, the respondents began broadcasting the following television ad:

It's Christmas in Washington.

They're piling big presents under the huge \$800 billion tax tree . . .

New spending on pet projects . . .

A black market in cigarettes . . .

Tax cuts for the lucky . . .

Lots of money for the new government bureaucracy . . .

Yes, it's the season of giving in Washington, but remember it's your taxes they're giving away . . .

\$800 billion in new taxes . . .

Merry Christmas from Washington, and it's only summer . . .

Contact your Member of Congress now and tell them you oppose the McCain Tobacco Tax. (Exhibit 33).

The sole aim of the ad is to urge opposition to the McCain bill.

On June 17, 1998, the Senate effectively rejected the McCain bill on a cloture vote. Complaint at 1. Nevertheless, the threat of onerous federal tobacco legislation did not

disappear on that date. Immediately after the June 17 vote, President Clinton and numerous Members of Congress, including the Minority Leaders in the Senate and House, stated that they would continue to press for the passage of tobacco legislation along the lines of the McCain bill. See, e.g., June 18 News Briefing by Senator Daschle and Rep. Gephardt; Associated Press, "Senate Kills Tobacco Bill," June 18, 1998 (quoting President Clinton as saying about the tobacco legislation: "It's dead today; it may not be dead tomorrow," he said. "I've never quit on anything this important in my life and I don't intend to stop now."").

Since June 17, the Senate has voted at least twice on efforts (both unsuccessful) to revive the McCain bill by way of amendments to unrelated legislation being considered. See 144 Cong. Rec. S6511 (daily ed. June 18, 1998); 144 Cong. Rec. S8091 (daily ed. July 14, 1998). Such efforts may well continue in the Senate. Moreover, given the existence of task forces on tobacco legislation in the House of Representatives and reports that such task forces are actively considering legislation that would depart dramatically from the terms of the Proposed Resolution, the respondents continue to this day to face the threat that the House of Representatives will move to adopt tobacco legislation that is antithetical to their interests. See, e.g., "Tobacco: House GOP Still Working on Legislation, No Date Set for Bill's Release," Daily Report for Executives (BNA), at A23, July 31, 1998. Indeed, such legislation has already been introduced in the House. See, e.g., H.R. 3868 (1998).

Accordingly, the respondents have continued to address the public about proposals for federal tobacco legislation. The following television ad was broadcast in anticipation of a House bill:

At election time, the politicians are always telling us they're
against taxes and for the working people.

Well now they have the chance to prove it before the election.

This tobacco tax bill some in Congress are talking about doesn't
make any sense. How is a more than half a trillion dollar tax
increase on working people going to stop kids from smoking?

It's just more taxes for more government.

I'm going to remember this fall what the politicians do this
summer.

Contact your Member of Congress. Tell them to oppose the new
tobacco tax. (Exhibit 37).

The subject of this ad, like all of the others, is comprehensive tobacco legislation. By its terms, the ad conveys the message that Members of Congress -- consistent with their promises to voters about opposing taxes -- should vote against the tobacco tax legislation and

that the public should urge their representatives to do so. Thus, the ad is designed to influence, through grassroots efforts, Members of Congress as they consider tobacco legislation, and not to influence how individuals vote during elections. Like the other ads, this ad does not refer to or depict any candidate; it does not urge a vote for or against any candidate or party; and its focus is purely legislative in nature, not electoral.

On July 2, 1998, the respondents began broadcasting a "man on the street" radio spot. (Exhibit 20.) The ad began, "Some in Congress are still pushing a big tax solution on tobacco. What do Americans think?" After several statements from various people who opposed new tobacco taxes, the ad concluded, "Contact your Member of Congress. Tell them to oppose new tobacco taxes." Again, this ad is consistent with the "anti-tax, anti-big government" theme that runs throughout the respondents' issue advertisements without exception.

More recently, the respondents have broadcast an advertisement, (Exhibit 39), that features photographs of American workers across the country. It begins by noting that they are the "real heroes" who "work hard for their families." These workers, according to the ad, are the ones whose "sacrifice has brought our economy back" and whose tax dollars have produced the first budget surplus in almost thirty years. The ad then expresses indignation that "even with a \$1.6 trillion surplus, some in Washington still want more than \$500 billion in new taxes." The ad asks the question "Isn't it time to give hardworking Americans a break?" and then concludes with an exhortation to "Contact your Member of Congress. Tell them to oppose new tobacco taxes."

Since the publication of the first issue advertisement in March of 1998, the objective of all of the print, radio and television advertisements has remained consistent: to express publicly the respondents' position on the substantive merits of comprehensive federal tobacco legislation. Affidavit of Lance Ian Morgan (the "Morgan affidavit") at ¶¶ 5, 7, 8 and 10 (Exhibit 69). None of the advertisements mentions a candidate for federal office nor contains a call to vote for or against any candidate or party. All of the advertisements focus exclusively on the substantive merits of the proposed legislation and clearly identify respondents as the speakers. Members of the public are urged to contact their members of Congress to express their views on tobacco legislation.

Respondents have made decisions about the timing, content and placement of each particular advertisement in direct response to events surrounding the issue of tobacco legislation. Morgan affidavit at ¶ 11. Accordingly, no decisions have been made regarding the content or placement of advertisements to be made in the fall, or even whether such advertisements will be made at all. Morgan affidavit at ¶ 12. Respondents currently anticipate, however, that federal tobacco legislation will still be a legislative issue in the fall and on into 1999, and thus the respondents continue to contemplate the possibility of additional advertisements.

Complainant also has published advertisements about this important public issue. See

e.g., Exhibits 45 through 68. During all relevant periods, the complainant has been actively pursuing its own heavily-financed campaign to influence the public and Congress. In so doing, it has taken positions that are diametrically opposed to respondents' positions on legislation such as the McCain bill. Such is the nature of debate in a free society.

II. THE COMPLAINT

The complaint is interesting as much for what it does not say as for what it does say. It does not allege that respondents have spent any money or published any advertisements in violation of the federal election laws. It, in fact, does not allege that any violation of those laws has occurred. Rather, the complaint focuses exclusively on "the tobacco industry's ads to be run in the Fall" and asserts that such "potential ads" will be illegal in-kind contributions. Complaint at 1; see also Complaint at 2 ("Communications, like the ads the tobacco industry is reported to have promised Republican Senators it would run . . . confer something of 'value' that constitutes an illegal 'contribution' by the tobacco industry."). Thus, complainant itself avoids any claim that a violation has occurred -- and only asserts that one might occur "in the Fall," if at that time respondents run ads that support or oppose candidates.

The only relief sought in the complaint is that the Commission "put an end" to future "illegal expenditures" by respondents. Since the only "illegal" expenditures referred to in the complaint are hypothetical expenditures allegedly to be made "in the Fall," the only possible relief the complainant could be seeking is to have the Commission attempt to enjoin respondents from publishing and broadcasting unspecified advertisements at some time in the future.

The complaint relies on press reports about a statement that was allegedly made by Senator Mitch McConnell in a private meeting with other Republican Senators prior to the final cloture vote on the McCain bill. Senator McConnell and his representatives have characterized the news accounts as inaccurate. According to the Bureau of National Affairs (BNA), "Mike Russell, a spokesperson for the National Republican Senatorial Committee, said McConnell made a statement to Republican colleagues before the tobacco vote, but he was merely 'offering analysis' of the political consequences, not promising anything. 'McConnell's statement was nothing more than a statement of the obvious. All he said was the companies will continue to fight for their interests,' Russell told BNA, June 30." "Tobacco: Industry, McConnell Dispute Charges by Anti-Tobacco Group In FEC Complaint," Daily Report for Executives, (BNA) at A-11, July 1, 1998. Senator McConnell apparently made similar comments before the complaint was filed with the FEC. On June 30, 1998, the day after the date of the complaint, the Washington Post reported that "[i]n an interview last week, McConnell said, 'I expect the [industry] advertising to continue because the legislative activity is continuing.'" Sandra Torrey, "Anti-Smoking Group Asks FEC to Halt Tobacco's Ads for Senate Allies," Wash. Post, June 30, 1998 (alteration in original).

III. ARGUMENT

A. REGARDLESS OF THE LEGAL STANDARD APPLIED, THE RESPONDENTS' ISSUE ADVERTISEMENTS ARE PROTECTED FIRST AMENDMENT SPEECH THAT IS WELL OUTSIDE THE COMMISSION'S JURISDICTION.

As the facts demonstrate, all of the advertisements run by the respondents are issue advertisements and are clearly designed to allow the respondents to participate in an ongoing federal legislative debate regarding comprehensive tobacco legislation. Nothing about these ads even suggests an effort to affect the outcome of any federal election. Accordingly, the advertisements are not "expenditures" and cannot, under any theory, be transformed into "in-kind contributions" made in connection with federal elections or otherwise treated as contributions or expenditures subject to FECA. Thus, the Commission must conclude that there is no reason to believe that a violation of the Act has occurred.

In the context of this matter, there is no need to determine the precise legal standard to be applied for purposes of deciding when communications can be treated as "in-kind contributions." Whatever standard is applied -- an "express advocacy" or a more expansive "electioneering" standard -- it is clear that the respondents' advertisements are quintessential issue advertisements and cannot be found to be "in-kind contributions." In Point 1 below, we explain our conclusion that a communication can be characterized as an "in-kind" contribution only if its content is such that it meets the constitutionally-mandated standard of "express advocacy," which respondents' ads clearly do not. In Point 2, we explain why the ads do not even rise to the level of "electioneering."

1. The FEC May Not Prohibit Corporate Speech that Does Not Contain Express Advocacy.

It is now axiomatic that FECA does not, and indeed because of the fundamental protection conferred by the First Amendment may not, regulate "issue advocacy." See Buckley v. Valeo, 424 U.S. 1 (1976) (*per curiam*); FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986).³ In Buckley, the Supreme Court distinguished between disbursements

³The weight of authority separating "issue advocacy," which government may not regulate, from "express advocacy," which is subject to some government regulation, is overwhelming. See, e.g., FEC v. Christian Action Network, Inc., 110 F.3d 1049 (4th Cir. 1997) ("CAN II") (awarding attorney fees and costs to the Network because the FEC's interpretation of § 441b(a), which depended on examining the meaning behind the images of an advertisement that did not contain express or explicit words advocating the election or defeat of a clearly identified candidate, was not substantially justified under 28 U.S.C. § 2412(d)(1)(A)); Faucher v. FEC, 928 F.2d 468 (1st Cir. 1991), *cert. denied sub nom. FEC v. Keefer*, 502 U.S. 820 (1991) (FEC regulation purporting to permit corporate expenditures for voter guides only where guides expressed no

made for the purpose of "express advocacy," and disbursements made for the purpose of "issue advocacy." In order to "insure that the reach of § 434(e) is not impermissibly broad," the Buckley Court narrowly construed the term "expenditure" to "reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." See 424 U.S. at 80. Buckley established a bright line to separate "express advocacy" from "issue advocacy." Express advocacy is limited to "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" Id. at 44 n.52 (emphasis added). Any communication that falls outside of that narrow definition is "issue advocacy" and must be afforded the broadest protection.

Addressing "issue advocacy," the Court emphasized:

Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political

opinion on the "issues" covered was beyond FEC's authority under § 441b); FEC v. Central Long Island Tax Reform Immediately Comm., 616 F.2d 45, 53 (2d Cir. 1980) (en banc) (FEC's definition of "express advocacy" was too broad where it included "implied" communications that encouraged the election or defeat of a clearly identified candidate); Right to Life of Dutchess County v. FEC, No. 97 Civ. 2614 (SHS) 1998 WL 283305 (S.D.N.Y. June 1, 1998) (holding that the definition of "expressly advocating" in 11 C.F.R. 100.22(b) is unconstitutionally overbroad because it omits the requirement that a communication include express or explicit words of advocacy); Maine Right to Life Comm. v. FEC, 914 F.Supp. 8, 13 (D.Me. 1996) (holding that the definition of "expressly advocating" in 11 C.F.R. § 100.22(b) is contrary to the Act because it restricts "issue advocacy"). aff'd per curiam Maine Right to Life Comm. v. FEC, 98 F.3d 1 (1st Cir. 1996); Clifton v. FEC, 927 F. Supp. 493, 500 (D.Me. 1996) (FEC's voter guide and voting record regulations are beyond FEC's authority "because they restrict issue advocacy in connection with expenditures"). aff'd on alternate grounds 114 F.3d 1309 (1st Cir. 1997) cert. denied 118 S.Ct. 1036 (1998); FEC v. Christian Action Network, 894 F. Supp. 946 (W.D. Va. 1995) (television advertisement identifying candidate Bill Clinton as pro-homosexual was not express advocacy). aff'd per curiam, 92 F.3d 1178 (4th Cir. 1996) ("CAN"); FEC v. Survival Educ. Fund, Inc., No. 89 Civ. 0347 (TPG), 1994 WL 9658 (S.D.N.Y. Jan. 12 1994) (expressions of hostility to the positions of an official are not express advocacy even when the implication that the official should not be re-elected is quite clear). aff'd in part and rev'd in part on alternate grounds 65 F.3d 285 (2nd Cir. 1995); FEC v. National Org. for Women, 713 F. Supp. 428 (D.D.C. 1989) (solicitation letters by organization were discussions of public issues which by their nature raised the names of candidates, and therefore not "express advocacy"); FEC v. American Fed'n of State, County and Mun. Employees, 471 F. Supp. 315 (D.D.C. 1979) (a "Nixon-Ford" poster circulated prior to the 1976 election was not "express advocacy" although it included a clearly identified candidate and could have tended to influence voting).

expression in order to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.

Id. at 14 (citation and internal quotation omitted) (emphasis added). The Buckley Court reasoned that the express advocacy test must be both narrow and explicit because:

[T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.

Id. at 42.

The complaint in this case arises under § 441b of the Act, which makes it unlawful for a corporation to make "expenditures" and "contributions," as defined in § 441b(b)(2). In FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 248-49 (1986) ("MCFL"), the Supreme Court definitively construed the term "expenditure" in § 441b and § 441b(b) and held that it only applies to the disbursement of corporate "funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." In other words, funds spent by corporations for issue advocacy are not "expenditures." Clearly, under MCFL, none of the corporate disbursements by respondents for issue advertisements has been an "expenditure," because none of the communications contains express advocacy. MCFL is controlling in this matter.

Moreover, the advertisements cannot constitute in-kind contributions because the Act itself excludes corporate disbursements for issue advocacy from the definition of contribution. Section 431 provides, in relevant part:

When used in this Act . . . (8)(B) The term "contribution" does not include- . . . (vi) any payment made or obligation incurred by a corporation . . . which, under section 441b(b) of this title, would not constitute an expenditure by such corporation
(Emphasis added).

As previously discussed, the Supreme Court in MCFL ruled that corporate disbursements for communications that do not contain "express advocacy" are not "expenditures" under § 441b(b). Therefore, under § 431(8)(B)(vi), such corporate disbursements are excluded from the definition of contributions under the Act. The combined operation of § 441b(b), as construed by the Court in MCFL, and § 431(8)(B)(vi) works to exclude entirely corporate disbursements for "issue advocacy" from regulation under the Act

as "expenditures" or "contributions."⁴ It is beyond questioning that the respondents' ads are "issue advocacy" and not "express advocacy." Not a single advertisement contains express or explicit words of election advocacy.

Any effort to transform expenditures into "contributions," so as to afford them lesser protection, totally breaks down when the alleged "in-kind contributions" are issue advertisements. When the Supreme Court stated in Buckley that a contribution limit "entails only a marginal restriction on the contributor's ability to engage in free communication," it is clear that the Court was addressing financial contributions of cash or cash equivalents. Id. at 20-21 ("A cash contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support.") (emphasis added). In contrast to a financial contribution, issue advertisements, like the ones run by the respondents, do "communicate the basis" for the speaker's support of a particular policy. Such advertisements are constitutionally protected speech, as distinguished from a contribution of money or some type of cash equivalent. Because the advertisements are clearly the respondents' speech, Buckley and MCFL dictate that such speech may be regulated under FECA only if it contains express advocacy. See Clifton v. FEC, 927 F.Supp 493, 499 n.6 (D.Me. 1996) ("[E]ven if section 441a's definition of 'contribution' were relevant, the legislative history indicates that the definition was intended to distinguish 'between independent expression of an individual's views and the use of an individual's resources to aid a candidate in a manner indistinguishable in substance from the direct payment of cash" S.Rep. No. 677, 94th Cong., 2d Sess. 31, 59 (1976), reprinted in 1976 U.S.C.C.A.N. 946, 974." (emphasis in original)).

2. The Respondents' Issue Advertisements Do Not Contain an "Electioneering Message."

Even if the Commission were to take a more expansive view of the meaning of the phrase "in connection with any election," as that phrase is used to delineate those contributions that are banned under § 441b, there would still be no basis for the Commission to find reason to believe that a violation has occurred, because none of the ads have contained an "electioneering message."⁵

⁴In FEC v. Akins, 118 S.Ct. 1777, 1781 (1998), the Court recognized that the exclusions from the definitions of "contribution" and "expenditure" in sections 431(8)(B) and 431(9)(B) respectively, contain "detailed categories of disbursements, loans, and assistance-in-kind that do not count as a 'contribution' or an 'expenditure,' " under the Act. That is precisely the analysis to be followed in this matter.

⁵The phrase "electioneering message" is not defined in the Act or the regulations promulgated thereunder, but the FEC has argued that § 441a(d)(3) of the Act provides for a broader interpretation of the phrase "in connection with" any federal election than the interpretation given that phrase by the Court in MCFL as used in § 441b(b), which is limited to

The issue ads began in March in direct response to Congress's legislative treatment of the Proposed Resolution, not in response to any federal election. The ads continue because the threat of onerous tobacco legislation remains an active issue. None of the ads even obliquely refers to any candidate, either in words or pictures; the focus of every ad has been on legislative issues, not candidates or parties; and, finally, none of the ads has urged the public to do anything beyond communicating with their representatives about the issue of federal tobacco legislation. Thus, none of the ads contains even an "electioneering message." See 15 Campaign Practices Guide 1985-1989; AO 1985-14.

In MUR 2580, the complainant alleged that an ad run by "Common Cause," a nonprofit corporation, violated § 441b. The ad in that matter specifically focussed on Senator Robert Dole and referred to his "bid for the presidency." The Commission dismissed that MUR and determined that in the context of the particular advertisement and Common Cause's overall grassroots campaign, "the purpose of the advertisement was to lobby on behalf of [campaign finance reform legislation]." See MUR 2580, First General Counsel's report at 7. The reference to Senator Dole's presidential bid was found to represent a fair argument that the Senator's position on the pending legislation was inconsistent with positions he had taken in his election campaign -- and, thus, such reference was simply a way to persuade or pressure him to vote for the legislation favored by Common Cause.

Respondents' ads in this matter are likewise a grassroots effort regarding legislation. Unlike the ad at issue in MUR 2580, none of the respondents' ads mentions a candidate. That is all the more reason to conclude, in the context of all of the respondents' ads, that the respondents are engaged in a grassroots lobbying campaign about tobacco legislation.

If the Commission were to expand its reading of the term "in-kind contribution," so as to attempt to reach the issue advertisements being run by the tobacco manufacturers, it would be taking a position that would severely limit the ability of a corporation to express its views on issues. The Supreme Court has flatly rejected claims that the government has compelling interests sufficient to overcome such core First Amendment rights as a corporation's ability to express its positions on the issues. See First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978).

B. THE VAGUE, SPECULATIVE AND PROSPECTIVE NATURE OF THIS COMPLAINT RAISES SIGNIFICANT CONSTITUTIONAL AND OTHER COMPELLING REASONS WHY THE COMMISSION SHOULD DECLINE TO FIND "REASON TO BELIEVE."

The complaint in this matter does not allege that a violation of the Act already has occurred. It is nothing more than an effort by a party on one side of a public policy debate to

"express advocacy." Colorado Republican Campaign Comm. V. FEC, 116 S.Ct. 2309, 2314 (1996).

use the Commission's processes to suppress or chill the possible content of future speech by parties on the other side of the debate. Such an effort represents an abuse of process and must be flatly rejected.

The Commission, quite properly, has been extremely reluctant to countenance complaints, like this one, that allege only possible future violations. This reluctance is grounded in compelling prudential considerations and is reinforced by the language of § 437g(a)(1), which allows "any person" to bring a complaint only for the purpose of alleging that a violation of the Act "has occurred." The statutory language is consistent with and supports the conclusion that one side of a public debate cannot be allowed to seek an upper hand in the debate by invoking the Commission's processes with speculative and hypothetical claims of future violations.⁶

This complaint is a striking example of the kind of abuse that can occur when complaints are not limited to actual (as opposed to hypothetical) violations. The complaint is a transparent attempt to exploit the enforcement authority of the Commission in order to harass respondents, to discredit respondents' past speech, and to prevent or chill respondents' future speech in order to give complainant, an organization that has been on the opposite side of the public debate, the advantage in expressing its views to the public.

The complaint also does not even allege that a violation of the Act is about to be committed. Rather, the complaint only makes vague allegations about "potential ads" that may be published, months in the future, "in the Fall." In view of the fact that no decisions have been made regarding ads to be published in the fall, as a practical matter, it is impossible for the Commission to determine that a violation is about to be committed.

The only matters in which the Commission has found reason to believe that a violation

⁶According to the unambiguous language of § 437g(a)(1), a person may file an administrative complaint only if it is predicated on a violation that "has occurred." Nowhere in § 437g(a)(1) is authority provided to file administrative complaints based on evidence or belief regarding a violation that is about to occur, let alone a violation that may occur in the distant future. When Congress intended in the FECA to provide for authority to challenge or remedy prospective actions, it expressed this intention in unambiguous statutory language. See, e.g., *id.* §§ 437g(a)(4)(A)(i) ("has committed or is about to commit") (emphasis added), 437g(a)(5)(C) ("has occurred or is about to occur.") (emphasis added), 437g(a)(6)(B) ("has committed, or is about to commit") (emphasis added). Here, contrary to the requirements of the statute, the complaint is prospective, because, at best, it alleges only that "potential ads," which respondents may publish "in the Fall" might amount to prohibited in-kind contributions by corporations. By promulgating 11 C.F.R. § 111.4(a), the Commission apparently has attempted to expand the reach of the statute to allow "[a]ny person who believes that a violation . . . has occurred or is about to occur" to file a complaint. Respondents nevertheless contend that the more restrictive statute governs complainant's standing in this administrative proceeding.

was about to be committed involved complaints filed on behalf of three candidates for the Republican Party Presidential nomination. (MUR 1167, 1168, 1170.) In those complaints, it was alleged that the corporate sponsor of a debate between two other candidates violated § 441b because it promoted their candidacies over the candidacies of the three complainants. The complaints were filed on February 19, 1980, and the debate was scheduled to be held on February 23, 1980, only four days later. In those matters the debate had been scheduled and each of the three complainants had requested to be allowed to participate and had been rejected. Because of the concrete nature of the allegations and the immediacy of the violation, the Commission found reason to believe that a violation was about to be committed.⁷ Unlike the complainants in the above matters, the complainant in this matter cannot make concrete allegations because the ads do not now and may never exist. Furthermore, the element of immediacy is completely lacking.

The complainant in this matter asks the Commission to prevent respondents' future speech based on speculation that the contents of that future speech will violate the Act. Yet, under these circumstances, no violation of the Act can possibly occur until a particular message has been published. Therefore, there is nothing for the Commission to investigate.

If it were to conduct an investigation, the Commission would be put in the position of trying to determine whether the content of respondents' "potential ads" would violate the Act. Such an investigation would be fraught with constitutional peril. Unlike that of other regulatory agencies, the "subject matter which the FEC oversees . . . relates to the behavior of individuals and groups only insofar as they act, speak, and associate for political purposes." FEC v. Machinists Non-Partisan Political League, 655 F.2d 380, 387 (D.C. Cir. 1981). Accordingly, the scope of the Commission's investigative powers is more limited than other agencies and may not be invoked simply to satisfy "official curiosity." Id. Furthermore:

It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas

Sweezy v. New Hampshire, 354 U.S. 234, 245 (1957). Indeed, "[t]he mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of government interference." Watkins v. United States, 354 U.S. 178, 197 (1957); Sweezy, 354 U.S. at 250.

By asking the Commission to prevent publication of potential advertisements,

⁷On February 21, 1980, the Commission decided to take no further action on these matters because it had determined that the expenses for the debate were being paid by one of the candidate's committees, not by the corporation.

complainant is seeking to have the Commission impose an unconstitutional prior restraint. Any prior restraint on speech bears a "heavy presumption against its constitutional validity." Berger v. Hanlon, 129 F.3d 505, 518 (9th Cir. 1997) (internal quotations omitted) (quoting CBS, Inc. v. Davis, 510 U.S. 1315, 1317 (1994) (Blackmun, Circuit Justice, staying preliminary injunction)). Thus, the government "carries a heavy burden of showing justification for the imposition of such a restraint." New York Times, Co. v. United States, 403 U.S. 713, 714 (1971) (internal quotations omitted) (citation omitted). "This heavy presumption is justified by the fact that 'prior restraints on speech . . . are the most serious and the least tolerable infringement on First Amendment rights.'" Grossman v. City of Portland, 33 F.3d 1200, 1204 (9th Cir. 1993) (quoting Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976)). It is inconceivable that the facts of this case would, under any circumstance, rebut this heavy presumption.

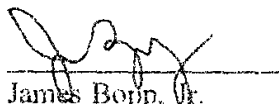
Given that the complaint seeks only remedies that would violate respondents' constitutional rights, the complaint should be dismissed for that reason alone.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should conclude that there is no reason to believe that a violation of the Act has occurred or is about to occur.

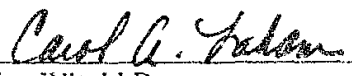
Respectfully submitted,

On behalf of all respondents,




James Bopp, Jr.
James R. Mason, III
BOPP, COLESON & BOSTROM
1 South 6th Street
Terre Haute, IN 47807


On behalf of Brown & Williamson
Tobacco Corp.,


Jan Witold Baran
Carol A. Laham,
Wiley, Rein & Fielding
1776 K St., N.W.
Washington, D.C. 20006-2304

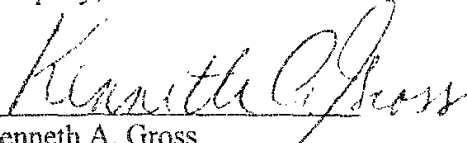
On behalf of R.J. Reynolds Tobacco
Company,


Terrence O'Donnell
Dennis Black
Williams & Connolly
725 Twelfth St., N.W.
Washington, D.C. 20005

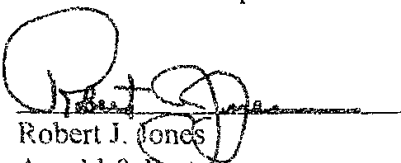
On behalf of Lorillard Tobacco Company,


Richard D. Shore
Dickstein Shapiro Morin & Oshinsky
2101 L St., N.W.
Washington, D.C. 20037-1526

On behalf of United States Tobacco
Company,


Kenneth A. Gross
Ki P. Hong
Skadden, Arps, Slate, Meagher & Flom
1440 New York Ave, N.W.
Washington, D.C. 20005-2111

On behalf of Philip Morris Incorporated,


Robert J. Jones
Arnold & Porter
555 Twelfth St., N.W.
Washington, D.C. 20004-1202

THE TOBACCO SETTLEMENT

What's in it for you? What's in it for us?

Last June, following three months of intensive negotiations between the tobacco industry, attorneys general from around the country, plaintiffs' lawyers and representatives from the public health community, a comprehensive agreement about tobacco was announced. The agreement now before Congress seeks to reduce underage tobacco use, while protecting the right of adults to use tobacco.

The agreement imposes unprecedented legal and financial burdens upon us, and subjects us to regulatory changes.

Even though these recommendations place extensive demands upon our industry, we are willing to accept them in order to end conflicts surrounding tobacco products.

Let's look briefly at why the proposals are good for all concerned.

What's in it for the public:

- A massive and sustained assault against underage smoking.
- Industry payments of billions of dollars that can be spent on health care.
- Larger, more prominent warning labels on cigarettes.
- A multibillion-dollar anti-smoking public education program, including \$500 million a year for an independently managed campaign aimed at preventing young people from smoking.
- A new \$25 billion trust fund for tobacco-related medical research.
- Industry-funded smoking cessation programs for adults.
- A ban on outdoor advertising and on the use of cartoon characters or human figures in other advertising.
- A ban on cigarette vending machines.
- Regulation of nicotine and tobacco products by the U.S. Food and Drug Administration, backed by severe penalties for violations.
- Disclosure of all health-related research.
- New federal restrictions on secondhand smoke in public places.
- Individuals can still sue tobacco companies for all actual damages, and for punitive damages related to future conduct.

What's in it for the industry:

If the settlement contained no benefits for our industry, or threatened the very existence of our operations, we could not accept it. While the current proposals will impose massive financial obligations, advertising and marketing restrictions, and stringent regulations upon us, they also mean our industry will benefit in certain ways:

- Regulatory guidelines will clearly define what the industry may and may not do.
- Payments of any legal judgments against the industry are capped on the order of \$5 billion each year with any excess judgments carrying over for payment the next year. The industry is required to pay even if it prevails in all litigation against it.
- Lawsuits are barred against persons other than the tobacco manufacturers, such as distributors, retailers, farmers, suppliers and stockholders.
- Because the industry will pay \$60 billion to settle punitive

damage claims, such claims for past conduct only are being barred: This \$60 billion will be used for a wide array of public health initiatives rather than for windfall payments to individual litigants and their lawyers.

- For payments by the industry of hundreds of billions of dollars in perpetuity, the attorneys general's suits and similar suits are settled, and mass suits – such as class actions, which could exhaust the settlement judgment fund and delay payments to individual plaintiffs – are barred.

But the industry is NOT getting "immunity":

- Notwithstanding the industry payments, individual smokers will still be able to sue tobacco companies for actual damages and to receive full compensation for any wrongful injuries to their health.
- The industry remains fully exposed to punitive damage claims related to future misconduct and to severe federal regulatory penalties.
- The industry receives no protection of any kind from criminal prosecution for any misconduct.

As a result:

- Tobacco companies will be able to operate in a more stable environment, and continue to employ hundreds of thousands of Americans.
- Tobacco companies will continue to make valuable contributions to the U.S. economy, to provide hundreds of thousands of jobs, and to pay billions of dollars in taxes.
- Tobacco companies will operate in a strictly regulated environment, with strong compliance provisions and severe penalties for any violations. We know how crucially important this is to us and all of America.

What happens now?

The provisions that we have accepted in the agreement will have far-reaching effects upon our industry. Indeed, we have made concessions that give up our constitutional rights.

We want to see the agreement become law. But not at the expense of adults who choose to use legal tobacco products, our shareholders, or the hundreds of thousands of Americans employed by the tobacco industry.

For example, some are now calling for immediate and massive increases in excise taxes on tobacco products. These taxes are not only unfair to millions of our customers, but also will have a devastating impact on the hundreds of thousands of people who work in our industry. Moreover, simply passing new excise taxes does nothing to further the comprehensive nature of the settlement.

All sides can find fault or favor with individual features of the settlement. But the President and Congress now have a unique opportunity to chart a new direction by passing comprehensive federal legislation on a national tobacco settlement. The whole of the settlement is much greater than the sum of its parts.

We're ready to work to make the agreement final and to put an end to decades of fruitless conflict, where no one wins.

To see the entire agreement and to learn more about it, visit our Web site at: www.tobaccoresolution.com.

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation • Lorillard Tobacco Company

THE TOBACCO SETTLEMENT GIVES THE TOBACCO INDUSTRY IMMUNITY—RIGHT?

WRONG.

Critics of the tobacco settlement say they oppose it because they don't want to give the tobacco industry immunity.

Consider the facts:

- Individuals will still be able to sue tobacco companies for actual damages.
- To settle punitive damage claims for past conduct, the industry has agreed to pay more than \$60 billion.
- Individuals will still be able to sue tobacco companies for punitive damages for any future misconduct by the tobacco companies.
- Payments of any legal judgments against the industry will be capped by as much as \$5 billion each year with any excess judgments carried over for payment the next year. The industry will be required to pay into the settlement fund even if it prevails in all litigation against it.
- The tobacco companies will receive no protection of any kind from criminal liability.
- For payments by the industry of hundreds of billions of dollars in perpetuity, the attorneys general's suits and similar suits will be settled, and mass suits – such as class actions, which could exhaust the settlement judgment fund and hinder payments to individual plaintiffs – will be barred.
- However, to make it easier, less time consuming and less expensive for individuals to sue the industry, tobacco companies will place millions of documents in a public depository for use in individual cases. And individuals will still be able to join together for pretrial discovery and motions.

The tobacco settlement offers the public billions of dollars to pay for health care costs; and hundreds of millions of dollars every year to pay for independently run programs to reduce youth smoking. It also contains severe and voluntary restrictions on the companies' First Amendment rights to advertise and market their products.

The civil liability provisions are fundamental to the proposed settlement. They are the linchpin of a rational, legal framework that make all the public health programs possible, and assure that individual claimants will be treated uniformly and fairly.

These facts may or may not change the minds of hard-core critics. But no one should be misled, anymore, by claims that the settlement grants tobacco companies "immunity." That's false.

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation • Lorillard Tobacco Company

www.tobaccoresolution.com

Exhibit 2

WE AGREED TO CHANGE THE WAY WE DO BUSINESS... NOT TO GO OUT OF BUSINESS.

Last June, our industry agreed to historic concessions that would change forever the way tobacco products are made, marketed and sold in this country.

While we are still committed to change, regrettably we believe the political process has ended any prospect for achieving a rational, comprehensive tobacco solution. Instead of mounting the kind of massive and sustained assault on underage tobacco use that the politicians all say they favor, Congress is now considering legislation that is not only unconstitutional, but also would:

- Impose half a *trillion* dollars in new taxes on the American people.
- Allow an unelected federal agency to make it illegal for adults to buy tobacco products.
- Create a black market in tobacco products.
- Establish 17 new federal bureaucracies.
- Devastate the tobacco industry and cost thousands of jobs among retailers, wholesalers, distributors, growers and others.

For our employees and the millions of Americans who use our products and work with the industry, we must oppose this effort. We agreed to fundamental change in the way we do business, but we cannot agree to changes that would put us out of business.

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

IS THERE ANYBODY LEFT
IN WASHINGTON WHO THINKS
THE MCCAIN TOBACCO TAX BILL
IS ABOUT KIDS?

"The effect is going to be that there will be zero money for the only programs to reduce smoking among children, which is what the bill was designed to do in the first place."

Joel Spivak,
Campaign for Tobacco-Free Kids,
St. Louis Post Dispatch, June 14, 1998.

APPARENTLY NOT.

Contact your Member of Congress now and
tell them you oppose the McCain Tobacco Tax.

Call 1-800-343-3222.

Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com



It's Christmas in Washington and all through the Congress, they're piling big presents under the huge \$800 billion tax tree. They've thought of all kinds of treats—new spending on pet projects, lots of money for new government bureaucracy, tax cuts for the lucky and a black market in cigarettes.

Bill Novelli of the Campaign for Tobacco-Free Kids says,

“It's a Christmas tree and it's getting heavier and heavier.”

—*Newsday*, June 12, 1998.

'Tis the season of giving in Washington, but remember it's your money—\$800 billion in new taxes—they're giving away.

Merry Christmas from Washington, and just think it's only summer...

Contact your Member of Congress now and tell them you oppose the McCain Tobacco Tax. Call 1-800-343-3222.

Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

WHAT IS THE MCCAIN TOBACCO BILL REALLY ABOUT? THE SAME OLD TAX AND SPEND.

The U.S. Senate is now considering the McCain tobacco tax bill—more than a \$500,000,000,000 tax increase. Supporters of this tax increase say it's meant to protect kids, but that argument doesn't add up or fly with the American people.

Just two years ago, the FDA proposed rules it said would cut youth tobacco use by 50 percent, without a penny in new taxes. Now, the Senate is debating the McCain bill, which would raise taxes by more than half a trillion dollars—nearly 60 percent coming from hardworking adults who earn less than \$30,000 a year. Most of the money will go to new federal spending and to expand the already mammoth federal bureaucracy.

Why the change? Politics. Tobacco companies are an easy target—and Washington has a seemingly insatiable desire for more taxes and more spending. The American people know that, by a margin of more than 3 to 1, according to an NBC/*Wall Street Journal* poll; they think the tobacco bill is about raising taxes, not about curbing teen smoking.

You don't have to like the tobacco industry to have real concerns about where Washington is headed.

**Call your Senators at 1-800-343-3222 and
tell them that *you* oppose the half-trillion-dollar
McCain tobacco tax increase bill.**

Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company

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Exhibit 6

IS THERE ANYONE
IN WASHINGTON WHO
DOESN'T THINK THE
McCAIN TOBACCO TAX BILL
IS ABOUT MONEY?

"The thing that's driving this now is the hunger for money."

—Anti-smoking activist Michael Pertschuk,
commenting on tobacco legislation, as reported
in *The Washington Post*, May 18, 1998.

The U.S. Senate is considering raising more than half a trillion dollars in new taxes—most of it hitting working people who make less than \$30,000 a year.

And what will Congress do with all the money? Most of it will simply go to new federal spending and to further swell the already massive federal bureaucracy.

And the way these huge taxes will hit—driving up the price of cigarettes so high, so fast—a black market is inevitable, according to a variety of experts.

\$500,000,000,000 in new taxes. New federal spending.
A black market.

Call your Senators at 1-800-343-3222
and tell them that *you* oppose
the McCain tobacco tax increase bill.

Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

Exhibit 7

Sweden Cuts Tobacco Tax By 27% In Bid To Curb Smugglers.

Source: *Time*, Wednesday, April 15, 1998

OTHER COUNTRIES GET IT. WHEN WILL OURS?

Sweden is learning, as Canada did a few years ago, that massive taxes on tobacco products can create a black market. Some experts believe the U.S. may be about to learn the same lesson. Washington is getting ready to raise the price of tobacco products so high, it would create a black market and provide our children with unregulated access to cheaper tobacco products.

According to the Fraternal Order of Police, legislation now being considered "will have the net effect of increasing the number of criminals on the streets, undercutting the achievements of law enforcement in this country, and exploding the ranks and profits of organized crime."

How did this happen? Politicians were aided and abetted by some typical Washington accounting.

The federal government wants you to believe their legislation will only increase the cost of a pack of cigarettes by \$1.10. But Washington isn't telling you about the hidden costs, retail and wholesale markups, state taxes and other factors that independent Wall Street analysts say would raise the price by more than \$2.50. That would put the real price of cigarettes up to \$5.00 a pack.

Why should you care? Because a huge tax increase not only gives kids unregulated access to a black market, it also raises taxes for those least able to afford it and destroys hundreds of thousands of jobs around the country.

If you're concerned that Washington hasn't learned from Sweden's lesson, call 1-800-343-1222 and tell Congress how you feel.

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

If the police are afraid of tobacco legislation...

How safe can it be?



Exhibit 9

"We are extremely apprehensive that passage of this legislation will precipitate the emergence of a thriving black market in cigarettes, posing huge problems for law enforcement at every level."

— *Fraternal Order of Police, in a letter to U.S. Senator Orrin Hatch, April 24, 1998.*

"The emerging black market for tobacco will, in effect, be a new unfunded mandate for law enforcement. By reaching for the laudable goal of reducing youth smoking, Congress is setting up law enforcement for another battle."

— *Federal Law Enforcement Officers Association, in a letter to U.S. Senator Orrin Hatch, April 27, 1998.*

"If successful, the legislation will spawn a large and burdensome black market that would impose an additional burden on law enforcement agencies already under severe manpower pressure."

— *International Union of Police Associations, in a letter to U.S. Senator Orrin Hatch, April 28, 1998.*

"...I have seen some forecasts that this legislation would bring the overall price of a pack of cigarettes to \$5. Undoubtedly, at that price, cigarette smuggling may increase beyond our control. Congress simply cannot place this burden by increasing the responsibilities of our nation's law enforcement."

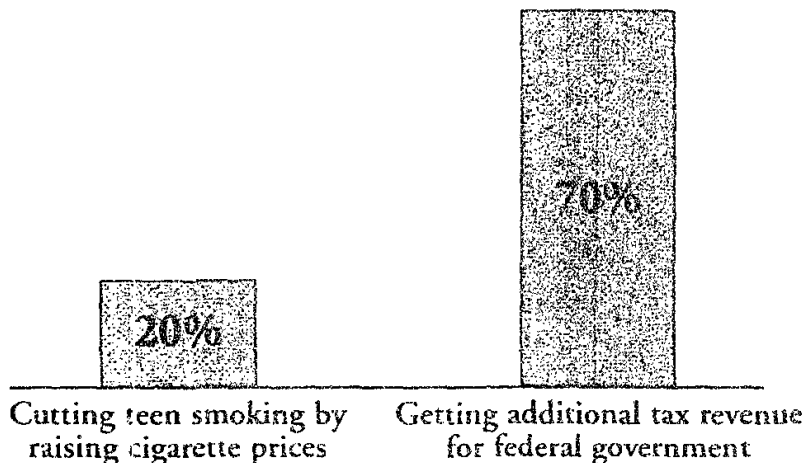
— *Executive Director, National Association of Police Organizations, Inc., in a letter to U.S. Senator Orrin Hatch, April 28, 1998.*

Call 1-800-343-3222

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Brown & Williamson Tobacco Corporation
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WHAT DO AMERICANS THINK SUPPORTERS OF THE TOBACCO BILL ARE REALLY INTERESTED IN?



Source: *Wall Street Journal* / NBC News Poll by Hart-Tetter,
as reported in the *Wall Street Journal*, April 23, 1998.

The American people get it. They want to see underage use of tobacco products lowered, but they know that \$500,000,000,000 in new taxes, new government bureaucracies and a black market aren't the way to do it. The American people might also find it curious that just two years ago, the FDA told them it had designed rules to cut youth smoking that wouldn't require any new taxes. You can fool some of the people some of the time, but not all of the people all of the time.

You don't have to like the tobacco companies to understand that old-fashioned tax and spend politics has hijacked tobacco legislation.

THE TOBACCO BILL:

"It isn't about protecting kids,
it's about raising taxes."

Call 1-800-343-3222

Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

Exhibit 10

BIG TAXES, BIG GOVERNMENT THERE THEY GO AGAIN...

Washington is going haywire again, and pursuing its old agenda of tax and spend, without worrying about the consequences.

Congress is considering a huge new tax increase, new expansion of government, and unprecedented infringement on personal liberty.

Politics has transformed a tobacco resolution, which was a historic opportunity to change the tobacco industry and reduce underage use of tobacco products, into the following:

- A more than \$500,000,000,000 tax increase—over half a trillion dollars—falling on people who make \$30,000 a year or less.
- New government spending—this new tax will be placed in a fund to pay for tax cuts for the rich, and new federal spending.
- The price of cigarettes rising to \$5 a pack — \$50 for a carton of cigarettes.
- A black market for tobacco products, with unregulated access to children.
- Jobs at risk—hundreds of thousands of jobs—not only in the tobacco industry, but among farmers, retailers and small businesses.

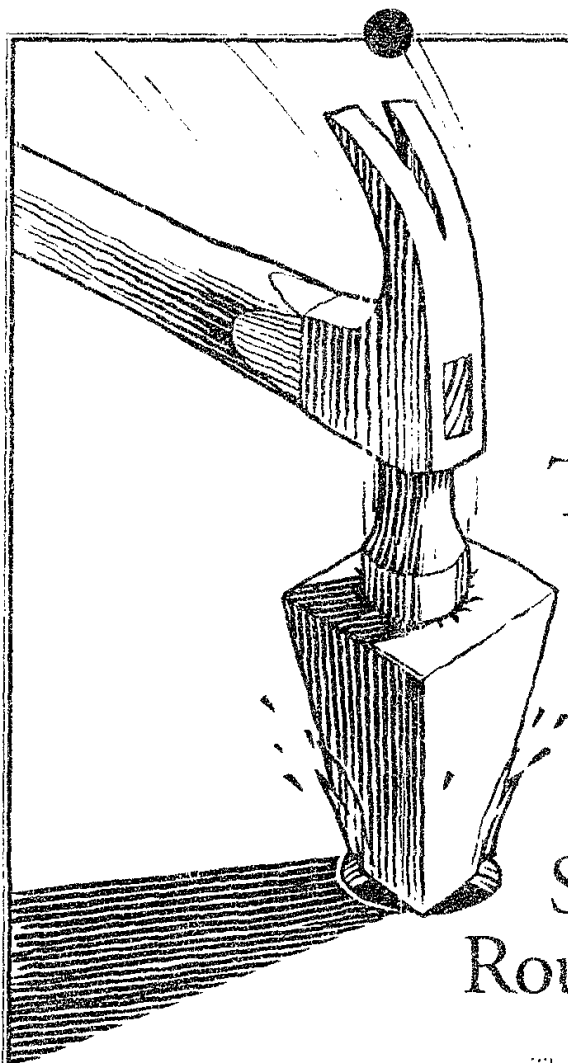
Think about it: In a time when we have a budget surplus, a huge new tax increase to fund more federal spending. The era of big government is supposed to be over, but Washington wants to create more than a dozen new bureaucracies, and give unelected federal bureaucrats the power to ban tobacco products.

Washington may say it's just punishing the tobacco industry, but it's also really hurting the American people, and jeopardizing the fundamental principles of limited government and personal freedom. You don't have to like tobacco companies to think that there's something really wrong with Washington's approach.

If you're concerned about where Washington is headed, call your Senators at 1-800-343-3222.

Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com



The McCain Tobacco Tax:

Square Peg, Round Hole.

The McCain tobacco tax can't be hammered into something that makes sense. An important goal—cutting youth tobacco use—has been forced into the same old tax and spend. And the American people know it. They don't want kids to use tobacco, but they know the McCain bill isn't about that. They know it's about money—more than \$800,000,000,000 in new, regressive taxes on working families, tax cuts for wealthy Americans, unconstitutional legislation, a black market and new government spending.

If you're concerned about where Washington is headed, call your Member of Congress now at 1-800-343-3222.

Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

BIG TAXES, BIG GOVERNMENT THERE THEY GO AGAIN...

Washington is going haywire again, and pursuing its old agenda of tax and spend, without worrying about the consequences.

Congress is considering a huge new tax increase, new expansion of government, and unprecedented infringement on personal liberty.

Politics has transformed a tobacco resolution, which was a historic opportunity to change the tobacco industry and reduce underage use of tobacco products, into the following:

- A \$500,000,000,000 tax increase – half a trillion dollars – with the majority of it falling on people who make \$30,000 a year or less.
- New government spending – this new tax will be placed in a fund to pay for tax cuts for the rich, and new federal spending.
- The price of cigarettes rising to \$5 a pack – \$50 for a carton of cigarettes.
- A black market for tobacco products, with unregulated access to children.
- Jobs at risk – hundreds of thousands of jobs – not only in the tobacco industry, but among farmers, retailers and small businesses.

Think about it: In a time when we have a budget surplus of up to \$75 billion, a huge new tax increase to fund more federal spending. The era of big government is supposed to be over, but Washington wants to create 17 new bureaucracies, and give unelected federal bureaucrats the power to ban tobacco products.

Washington may say it's just punishing the tobacco industry, but it's also really hurting the American people, and jeopardizing the fundamental principles of limited government and personal freedom. You don't have to like tobacco companies to think there's something really wrong with Washington's approach.

If you're concerned where Washington is headed, call 1-800-343-3222.

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

BSMG Worldwide

Date: 3/10/98

Client: Project Blue

Title: Facts 5

Medium: Radio

Time: :60

ANNCR (VO): For years, there's been a growing controversy over smoking...but now, there's a real chance to make progress...

Congress is considering tobacco legislation that could reduce youth smoking, and preserve the rights of adults to smoke...

The tobacco companies would agree to get rid of all outdoor advertising, put larger, more prominent warning labels on cigarettes, pay billions of dollars that can be spent on health care; and \$500 million a year for independent programs to reduce youth smoking...

In return, what do the tobacco companies get? They don't get immunity. They get limited protections. Class action lawsuits, for example, are settled now, and not allowed in the future. But individuals can still sue tobacco companies for actual damages, and there are no limits on punitive damages for future conduct.

The tobacco settlement. A unique opportunity to move forward.

Get all the facts. Call 1-800-556-9969. This message was paid for by Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, America's leading tobacco companies.

Exhibit 14

Youth rev radio :60

ANNCR(VO):

Do you think we need more than half a trillion dollar tax increase to reduce youth smoking?

Think about it . . . more than half a trillion dollars in new taxes . . .

That's what the U.S. Senate is considering now with the McCain Tobacco Tax Bill.

Supporters say it's about protecting kids, but that argument doesn't add up . . .

Just two years ago the FDA proposed rules that said they would cut youth smoking by 50% . . .

Without a penny in new taxes . . .

Now, the Senate is debating a bill that could raise taxes by half a trillion dollars or more . . .

And where's most of that money going?

To new federal spending and to expand the already mammoth federal bureaucracy.

No wonder that by more than a 3 to 1 margin, according to an NBC-Wall Street Journal poll, the American people think the tobacco bill is about raising taxes, not curbing teen smoking . . .

McCain's Tobacco Tax Bill . . . it's about the money.

Call your Senators at 1 800-343-3222 and tell them you oppose the McCain Bill.

Paid for by Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, and United States Tobacco Company

Exhibit 15

April 23, 1998

"Officer" Radio :60 -- As recorded

GEORGE WEISE(VO): My name is George Weise.

From 1993 to 1997 I was the Commissioner of the United States Customs Service.

I'm here today because I'm concerned about reports out of Washington that Congress plans to raise the price of cigarettes so high, that we'll face a black market in cigarettes.

Reports are that Washington wants to raise cigarettes to \$5 a pack -- \$50 a carton.

At that price, a black market is a certainty.

As a former Customs official, I can tell you that a black market would be a law enforcement nightmare.

It will be impossible to control, and will give children unregulated access to cigarettes.

We should oppose this misguided policy.

Thank you for your attention.

ANNCR(VO): If you're concerned where Washington is headed, call 1 800-343-3222.

Paid for by

Philip Morris Incorporated • R.J. Reynolds Tobacco Company

Brown & Williamson Tobacco Corporation

Lorillard Tobacco Company • United States Tobacco Company

Exhibit 16

ANNCR(VO): What do you think will happen to South Carolina (*insert other tobacco state*) if Congress raises over half a trillion dollars in new taxes on tobacco?

Those tax hikes will devastate a vital sector of South Carolina's (*insert other tobacco state*) economy that thousands of people here depend on . . . farmers, wholesalers, retailers and small businesses.

Washington is voting on tobacco legislation that will raise over half a trillion dollars in new taxes, create new federal bureaucracies, and throw thousands out of work.

Washington says this is to punish the tobacco industry, but this legislation hurts working people.

The politicians are going to raise the price of cigarettes so high there'll be a black market in cigarettes with unregulated access to children.

Big taxes. Big government. Big job losses. The same old Washington.

Contact your Senators now at 1-800-343-3222, and tell them you oppose the McCain Tobacco Tax.

Paid for by , Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, United States Tobacco Company.

May 21, 1998

"Bipartisan" Radio :60

ANNCR(VO):

Two years ago, the federal government proposed rules to reduce youth tobacco use by 50%.

Without one penny in new taxes.

Now Washington is voting on half a trillion dollars in new tobacco taxes. And who'll pay these taxes? More than half of the new taxes will be paid by Americans earning \$30,000 a year or less...

And most of the money will go to new federal spending and to further expand the already massive federal bureaucracy...

Washington says these tobacco taxes are supposed to be about cutting youth tobacco use, but even a leading anti-smoking activist admits, "The thing that's driving this now is the hunger for money."

Democrats used to be for working people...

Republicans used to be against taxes...what happened?

Contact your Senators now at 1-800-343-3222, and tell them you oppose the McCain Tobacco Tax.

PAID FOR BY:

Brown & Williamson Tobacco Corporation

Lorillard Tobacco Company • Philip Morris Incorporated

R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

Exhibit 18

June 19, 1998

"Tax Agenda Version 2" Radio :60

Recently, hard working Americans sent a message to Congress...

They said no to a bill that would have created \$800 billion in new tobacco taxes, huge new federal spending on pet projects, and a black market in cigarettes. . .

But the battle isn't over...

Some in Washington are right back at it...

In the House of Representatives, some members are working towards new legislation that would create huge new taxes for Americans ...

If you liked the McCain Bill defeated in the Senate, you'll love the legislation some House Members are proposing.

It's more of the same - huge new taxes and a massive federal bureaucracy.

When will they get the message?

Americans oppose youth tobacco use, but they know that massive new taxes and spending aren't the answer...

Contact your Member of Congress and tell them "no" on raising taxes.

Call 1 800-343-3222

Paid for by:
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company

Exhibit 19

July 2, 1998

Radio "Man on the Street 2" :60

"Some in Congress are still pushing a big tax solution on tobacco. What do Americans think?"

(various people)

"I think that Washington's answer to everything is new taxes."

"It's wasteful spending, and the people who get hurt are us."

"They are just basically milking that cash cow one more time."

"Big government and taxes are not the way to go."

"There has got to be some other way."

"The laws that we already have on the books, they have been made, why not use them?"

"This is another big fix which won't work, just like the Healthcare proposal did not work."

"I feel that the tax money would only go more and for bigger government."

"I would say that the taxes are going to Washington's pet projects."

"Working people get stuck paying all the taxes."

"The middle class, they are the ones who are going to pay the taxes for legislation like this."

"When are they going to get the message? I don't know."

Contact your member of Congress. Tell them to oppose new tobacco taxes.
Call 1-800-343-3222.

Paid for by:

Brown and Williamson
Lorillard Tobacco Company
Philip Morris, Inc.
R.J. Reynolds Tobacco Company
United States Tobacco Company

BSMG Worldwide

Date: 3/3/98

Client: Project Blue

Title: New Day "As Recorded" Medium: TV

Time: :60

TITLES W/ ANNCR (VO):

For years, there's been bitter conflict about tobacco issues...

Isn't it time to end the conflict and move forward?

Here's what the tobacco companies have agreed to do to achieve a reasonable tobacco settlement...

The tobacco industry will pay \$500 million a year for an independent, public education campaign to reduce youth smoking and billions of dollars that can be spent on health care.

Disclosure to the FDA about the health effects of tobacco products.

An end to all outdoor tobacco advertising.

No cigarette vending machines.

Larger, more prominent warning labels on cigarettes.

In return for these payments and concessions, what do the tobacco companies get?

They don't get immunity.

Class action lawsuits are settled now, and not allowed in the future.

But, individuals can still sue tobacco companies for actual damages, and there are no limits on punitive damages for future conduct.

The tobacco settlement. A unique opportunity to end the conflict and move forward.

Get the facts for yourself.

TITLECARD: Get the facts for yourself. Call 1-800-556-9969. Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company

www.tobaccoresolution.com

April 13, 1998

"Fight Back Revised" TV :60 -- As Recorded

Last June, there was a historic resolution of tobacco issues. This would have changed the tobacco industry, and reduced underage use of tobacco products. But now politics has taken over.

Instead of a reasonable debate on the resolution, Washington has gone haywire, proposing the same old tax and spend.

Even with a huge budget surplus, Congress is actually considering raising half a trillion dollars in new taxes.

And who'll pay the majority of these taxes? Working people -- people earning \$30,000 a year or less. But that's not all.

- There'll be new federal spending.
- 17 new government bureaucracies.
- Cigarettes up to \$5 a pack -- \$50 a carton.
- A black market with unregulated access to children.
- An unelected federal agency with new power to make it illegal to buy tobacco products.
- Huge job losses among farmers, retailers and small businesses.
- Big taxes.
- Big government.
- Big job losses.

If you're concerned where Washington is headed, call 1-800-343-3222.

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com

April 13, 1998
"New Taxes" TV - As Recorded
:30

Video

\$500,000,000,000 in new taxes
-- 1/2 trillion dollars --

Chyron with sources

Chyron with sources

Headlines

Chyron with 800#, website address
and disclaimer

V/O:

This is what the American people are
looking at if Washington gets its way...

More tax and spend...

Half a trillion in new tobacco taxes
to pay for new federal spending...

The result?

- Huge new taxes for working people
- Cigarettes at \$5 a pack -- \$50 a carton
- A black market in cigarettes, with
unregulated access to children.
- Jobs at risk for thousands of Americans...

Even with a huge budget surplus, does
Congress really have to raise taxes -- again?

It's time to speak out.

April 22, 1998

"Tractor-Trailer" TV :30

ANNCR(VO):

SOURCE: Sanford Bernstein, April 3, 1998, Morgan Stanley, April 9, 1998, The Wall Street Journal, April 3, 1998

America's law enforcement officers may soon face another problem.....a black market in cigarettes.

SOURCE: Salomon Smith Barney, April 8, 1998

Washington has proposed raising cigarette prices up to \$5 a pack -- \$50 a carton. Experts say this will create a huge black market.

And when you consider that a single tractor-trailer can carry enough black market cigarettes...

SOURCE: Finished Goods Distribution, April 22, 1998

...to get an illegal haul of over a million dollars...

Washington is creating a serious new law enforcement problem.

Contact your Senators now and tell them to vote against the McCain Tobacco Tax.

TITLECARD:

Call 1 800-343-3222

Brown & Williamson Tobacco Corporation

Lorillard Tobacco Company

Philip Morris Incorporated

R.J. Reynolds Tobacco Company

United States Tobacco Company

www.tobaccoresolution.com

Exhibit 24

April 23, 1998

"Officer" TV :30 - As Recorded

CHYRON: George Weise, Former U.S. Customs Commissioner
George Weise (OC):

I'm the former Commissioner of the U.S. Customs Service...

SOURCE: Salomon Smith Barney, April 8, 1998; Sanford Bernstein, April 3, 1998;
Morgan Stanley, March 31, 1998

and the last thing we need in this country is a black market in cigarettes...

But that's exactly what will happen

... if Washington raises cigarette prices to \$5 a pack...

And with a black market, children will have unregulated access to cigarettes

Instead of addressing the problem of underage smoking, Washington is about to create a huge, new law enforcement problem...

Announcer(V/O): If you're concerned where Washington is headed, call 1-800-343-3222.

TITLECARD:

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com

April 30, 1998
"Cuckoo" TV :30

ANNCR(VO): Washington has gone cuckoo again...

Instead of doing something about youth smoking, Washington wants to:

ANNCR(VO) & TITLECARDS:

Raise half a trillion dollars in new taxes.

Source: Wall Street Journal, April 10, 1998.

Spend billions on federal programs.

Source: Washington Post, February 3, 1998.

Create 17 new government bureaucracies.

Source: Morgan Stanley, April 9, 1998.

ANNCR(VO): What about youth smoking?

Washington wants to raise the price of cigarettes so high there'll be a black market in cigarettes with unregulated access to kids...

Source: Salomon Smith Barney, April 8, 1998; Sanford Bernstein, April 3, 1998; Morgan Stanley, April 9, 1998; Wall Street Journal, April 3, 1998.

New taxes...

New spending...

And a black market...

Call 1 800-343-3222.

TITLECARD:

Call 1 800-343-3222

Philip Morris Incorporated • R.J. Reynolds Tobacco Company

Brown & Williamson Tobacco Corporation

Lorillard Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

ANNCR(VO): What is Washington thinking?

May 4, 1998

"Martelle" TV :60

Ron Martelle (OC):

I'm Ron Martelle, a former Canadian Mountie and mayor of Cornwall, a small town in Eastern Canada...

You'd think you could move to a town like Cornwall to get away from crime but when Canada raised taxes on cigarettes, smugglers were everywhere.

And I'm not talking about small time dealers selling packs out of their trunk.

The criminals that showed up in Cornwall threatened my life and the lives of my family.

We had to have police protection around the clock.

All because a tax that was supposed to protect our teenagers from smoking ended up endangering all of us.

All that, and teen smoking didn't ever go down.

I don't see how an American tobacco tax will be any different.

I'd hate to see that same thing happen to your town. If it can happen here, it can happen anywhere.

Announcer (VO): Call 1-800-343-3222 to stop the tobacco bill. It's a bill no one can afford.

Brought to you by America's tobacco companies and their workers.

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • United States Tobacco Company

May 11, 1998

"Summary" TV :30

Washington's tobacco legislation...

What's in it for you?

Half a trillion dollars in new taxes...

New federal spending...

Cigarettes at \$5 a pack, creating a black market...

No wonder it's opposed by millions of hardworking Americans...

The Tobacco Bill...

New taxes...

New Spending...

A black market...

Only in Washington could they get it so wrong...

Contact your senators at 1-800-343-3222

Brown & Williamson Tobacco Corporation

Lorillard Tobacco Company • Philip Morris Incorporated

R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

May 13, 1998

"Man on Street" TV :30

ANNCR(VO) & TITLECARD: Americans speak out on a half trillion dollar tax increase on tobacco.

WE SEE SHOTS OF PEOPLE TALKING ON-CAMERA IN AMERICA OF VARIOUS AGES, RACES, GENDERS. WE WILL SEE A VARIETY OF BACKGROUNDS (RURAL, URBAN, ETC.) FAMILIES WILL BE PORTRAYED AS WELL AS BUSINESSPEOPLE, FARMERS, RETAILERS.

"It's a lot of money."

"That's a lot of zeroes."

"\$500 billion."

"We don't need any more taxation."

"I think enough is enough."

"The government is wacky."

"It's crazy."

"It'll end up hurting everybody."

"What are you going to do with the half trillion dollars?"

"Once the government gets their hands on money."

"You have pork barrel this and pork barrel that."

"They just tax us too much and they spend too much."

"It just doesn't make sense, no it doesn't."

ANNCR(V/O): Contact your senators, call 1-800-343-3222.

TITLECARD:

PAID FOR BY:
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com

May 20, 1998
"New Taxes" TV
:30

Video

**\$500,000,000,000 in new taxes
-- 1/2 trillion dollars --**

Chyron with sources

Chyron with sources

Headlines

**Chyron with 800#, website address
and disclaimer**

V/O:

This is what the American people are
looking at if Washington gets its way...

More tax and spend...

Half a trillion in new tobacco taxes
to pay for new federal spending...

The result?

- Huge new taxes for working people
- Cigarettes at \$5 a pack -- \$50 a carton
- A black market in cigarettes, with
unregulated access to children.
- Jobs at risk for thousands of Americans...

Even with a huge budget surplus, does
Congress really have to raise taxes -- again?

It's time to speak out.

May 21, 1998

"Bipartisan" TV :30

ANNCR (VO):

Two years ago, Washington said it would cut youth tobacco use in half without a penny in new taxes...

Now, Washington is voting to raise half a trillion dollars in new tobacco taxes...

Paid mostly by Americans earning under \$30,000 a year...

Washington says it's about kids, but a leading tobacco opponent admits, "The thing that's driving this now is the hunger for money."

Republicans used to be against taxes...

Democrats for working people...

What happened?

Contact your Senators now and tell them you oppose the McCain Tobacco Tax.

TITLECARD:

PAID FOR BY:
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com

May 21, 1998

"Tobacco" TV :30

Thousands of honest, hardworking Americans in our state make their living from tobacco... farmers, warehousemen, small business people...

We support our families and educate our children from this legal livelihood...

Now, the politicians in Washington are voting to destroy our way of life... by raising half a trillion dollars in new tobacco taxes...

Washington wants to tax thousands of Americans out of business...

That's not right.

Contact your Senators now and tell them you oppose the McCain Tobacco Tax.

TITLECARD:

Call 1-800-343-3222

Brown & Williamson Tobacco Corporation

Lorillard Tobacco Company • Philip Morris Incorporated

R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

June 11, 1998
"Christmas" TV

It's Christmas in Washington

They're piling big presents under the huge \$800 billion tax tree...

New spending on pet projects...

A black market in cigarettes . . .

Tax cuts for the lucky...

Lots of money for new government bureaucracy...

Yes, it's the season of giving in Washington, but remember it's your taxes they're giving away...

\$800 billion in new taxes...

Merry Christmas from Washington, and it's only summer...

Contact your Member of Congress now and tell them you oppose the McCain Tobacco Tax.

TITLECARD:

Call Your Member of Congress
1 800-343-3222

Paid for by:
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com

Exhibit 33

June 19, 1998
"Tax Agenda" TV :30

It's hard to keep Washington from taxing and spending...

Recently, hard working Americans sent a message to Congress...

They said no to \$800 billion in new tobacco taxes and huge new federal spending...

But the battle isn't over...

Some in Washington are right back at it...

They're still proposing huge new taxes...

When will they get the message?

Americans oppose youth tobacco use, but know that new taxes and spending aren't the answer...

Contact your Member of Congress. Tell them to stand up for working people and against a new tobacco tax bill.

TITLECARD:

Call Your Member of Congress
1 800-343-3222

Paid for by:

Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com

June 19, 1998

"Christmas Tree, Vers. 3" TV :30

The Christmas tax tree fell over in Washington...

Because hard-working Americans sent a message to Congress...

They said no to \$800 billion in new tobacco taxes...

But now, some people are already trying to put the tree back up...

Loading it with new taxes and spending...

And massive new federal bureaucracy...

It's still the season of giving in Washington, and it's still your hard-earned money they're trying to give away...

Contact your Member of Congress. Tell them to stand up for working people and against a new tobacco tax bill.

TITLECARD:

**Call Your Member of Congress
1 800-343-3222**

**Paid for by:
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com**

June 26, 1998
"MOS 2" TV :30

ANNCR & TITLECARD: Some in Congress are still pushing a big tax solution on tobacco . . . What do Americans think?

WE SEE SHOTS OF PEOPLE TALKING ON-CAMERA IN AMERICA OF VARIOUS AGES, RACES, GENDERS. WE WILL SEE A VARIETY OF BACKGROUNDS (RURAL, URBAN, ETC.) FAMILIES WILL BE PORTRAYED AS WELL AS BUSINESSPEOPLE, FARMERS, RETAILERS.

"They're going to stick it to working people . . . that's who'll pay the taxes . . ."

"Big government is always Washington's answer. . ."

"Kids shouldn't smoke, but it's the parents' job not the government's."

"It's like that health care plan a couple of years ago . . . more big government. . ."

"Why is Washington's answer to everything always new taxes?"

"They take our money and spend it on their pet projects . . ."

"Big government, big taxes aren't the way to go . . ."

"When are they going to get the message?"

ANNCR(V/O): Contact your Member of Congress. Tell them to oppose new tobacco taxes.

TITLECARD: Call 1-800-343-3222.

PAID FOR BY:
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com

June 30, 1998

"November" Man & Woman Versions :30

Man/Woman(OC):

At election time, the politicians are always telling us they're against taxes and for working people.

Well now they have a chance to prove it before the election.

This tobacco tax bill some in Congress are talking about doesn't make any sense. How is a more than half a trillion dollar tax increase on working people going to stop kids from smoking?

It's just more taxes for more government.

I'm going to remember this fall what the politicians do this summer.

ANNCR(V/O): Contact your Member of Congress. Tell them to oppose a new tobacco taxes.

TITLECARD: Call 1-800-343-3222.

PAID FOR BY:

**Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com**

July 6, 1998
"MOS Final" TV :30

ANNCR & TITLECARD: Some in Congress are still pushing a big tax solution on tobacco . . . What do Americans think?

WE SEE SHOTS OF PEOPLE TALKING ON-CAMERA IN AMERICA OF VARIOUS AGES, RACES, GENDERS. WE WILL SEE A VARIETY OF BACKGROUNDS (RURAL, URBAN, ETC.) FAMILIES WILL BE PORTRAYED AS WELL AS BUSINESSPEOPLE, FARMERS, RETAILERS.

"Working people get stuck paying all the taxes."

"I think that Washington's answer to everything is new taxes."

"They're just basically milking that cash cow one more time."

"There's got to be some other way."

"Big taxes and government just aren't the way to go."

"The government is too much involved in our lives as it is."

"It's another way of the government getting into their pocket."

"When are they going to get the message? I don't know."

ANNCR(V/O): Contact your Member of Congress. Tell them to oppose new tobacco taxes.

TITLECARD: Call 1-800-343-3222.

PAID FOR BY:
Brown & Williamson Tobacco Corporation
Lorillard Tobacco Company • Philip Morris Incorporated
R.J. Reynolds Tobacco Company • United States Tobacco Company
www.tobaccoresolution.com

July 22, 1998
Revised "Surplus" TV :30

VISUAL:

Dramatic still photographs of American workers across the country in all different regions -- urban and rural.

ANNCR(VO):

These are the real heroes of the American economy . . .

Men and women across this country who work hard for their families . . .

Their sacrifice has brought our economy back and

Source: Presswire, July 16, 1998

their tax dollars have given us the first budget surplus in almost thirty years.

Source: Congressional Budget Office, 10-year surplus projection, July 17, 1998

But even with a \$1.6 trillion surplus,

Source: St. Louis Post Dispatch, June 19, 1998

Some in Washington still want more than \$500 billion in new tobacco taxes . . .

Isn't it time to give hardworking Americans a break?

Contact your Member of Congress. Tell them to oppose new tobacco taxes.

TITLECARD:

Call 1-800-343-3222.

PAID FOR BY:

Brown & Williamson Tobacco Corporation

Lorillard Tobacco Company • Philip Morris Incorporated

R.J. Reynolds Tobacco Company • United States Tobacco Company

www.tobaccoresolution.com

Exhibit 40

Audio Tape
"Bozell/Eskew : 5/29/98"

Exhibit 41

Audio Tape
"National Media : Project Blue : 7/8/98"

Exhibit 42

**Video Tape
Reel # 1**

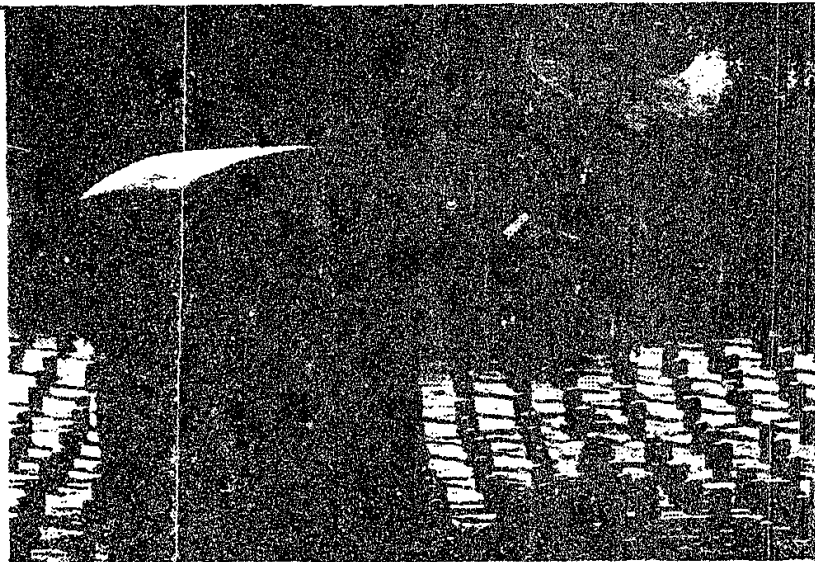
Exhibit 43

**Video Tape
Reel # 2**



Figure 1 consists of 11 sub-diagrams labeled (a) through (k), illustrating the steps of a proposed algorithm for solving a linear programming problem. Each diagram shows a coordinate system with a feasible region (shaded area) and an objective function line (dashed line). The algorithm iteratively moves from one vertex to the next, improving the objective function value. The steps are as follows:

- (a) Initial feasible region and objective function.
- (b) First iteration: A new vertex is found, and the objective function value is improved.
- (c) Second iteration: A new vertex is found, and the objective function value is improved.
- (d) Third iteration: A new vertex is found, and the objective function value is improved.
- (e) Fourth iteration: A new vertex is found, and the objective function value is improved.
- (f) Fifth iteration: A new vertex is found, and the objective function value is improved.
- (g) Sixth iteration: A new vertex is found, and the objective function value is improved.
- (h) Seventh iteration: A new vertex is found, and the objective function value is improved.
- (i) Eighth iteration: A new vertex is found, and the objective function value is improved.
- (j) Ninth iteration: A new vertex is found, and the objective function value is improved.
- (k) Final optimal solution: The algorithm terminates at the optimal vertex.



Every Day Without Action on Tobacco, **1,000** Kids Will Die Early

Every day 3,000 kids become regular smokers; tobacco will kill 1,000 of them prematurely.

Unless comprehensive legislation is enacted, more children will become addicted to tobacco. We can't afford to play politics with our kids' lives. Without tough, effective legislation, the only winner will be Big Tobacco.

It's time to protect kids and crack down on the tobacco industry.



WARNING:
Don't let America's future go up in smoke.

American Association for Respiratory Care; American Association for World Health; American Association of University Women; American Cancer Society; American College of Cardiology; American Dental Hygienists' Association; American Heart Association; American Protestant Health Alliance; American Psychological Association; American Society of Internal Medicine; Association of Schools of Public Health; Girl Scouts, USA; The HMO Group; National Association of Children's Hospitals; National Association of County & City Health Officials; National Association of Elementary School Principals; National Association of Pediatric Nurse Associates and Practitioners; National Association of Secondary School Principals; National PTA; Oral Health America; Partnership for Prevention; Pharmacist Planning Services, Inc.; Pharmacy Council on Tobacco Dependence; Women's Legal Defense Fund

CAMPAIGN FOR TOBACCO-FREE Kids™

Visit our website at www.tobaccofreekids.org.

The National Center for Tobacco-Free Kids, 1707 L Street NW, Suite 800, Washington, DC 20036

© 1998 National Center for Tobacco-Free Kids

New York Times, A25
February 8, 1998

Washington State
4/24/98

Will **Big Tobacco** Ever **Tell the Truth?**



**They said smoking
doesn't cause cancer,
that nicotine isn't
addictive, and that they
don't target kids.**

**And now they say
tobacco legislation
won't work.**

The tobacco industry has lied for more than 40 years. Now they're pushing the idea that a comprehensive tobacco policy is a big government solution that won't help kids.

That's another lie, and the American people know it.

A new poll* shows that more than 80 percent of the public believe Congress should pass a national tobacco control policy to reduce tobacco use among kids. In fact, a large majority says the tobacco industry's opposition makes them favor legislation even more.

**It's time for Congress to pass a tough, effective tobacco bill. No weak imitations.
Don't protect Big Tobacco.**

Tobacco vs. Kids. Where America draws the line.

CAMPAIGN for TOBACCO-FREE Kids™

To learn more, call 202-296-5469

or visit our web site at www.tobaccofreekids.org.

The National Center for Tobacco-Free Kids, 1707 L Street NW, Suite 800,
Washington, DC 20036

Senator McCain is Standing for America's Kids and Against Big Tobacco

A front group funded by the tobacco industry has been running ads claiming that Senator McCain's tobacco control bill is a big tax and spend measure that won't stop teen smoking.

That's false. Don't believe it. These people don't care about our children. They care about protecting tobacco companies, cheap cigarettes and business as usual.

Five million teens alive today will die early from tobacco-caused diseases unless Congress passes tough, comprehensive legislation to help America solve this enormous problem.

John McCain and those who voted with him in the Senate Commerce Committee have given Congress a historic opportunity to save millions of lives.

Thank you, Senator McCain, for putting kids first.

**Tobacco vs. Kids.
Where America draws the line.**



American Cancer Society • American Academy of Child & Adolescent Psychiatry • American Academy of Family Physicians • American Association of Physicians of Indian Origin • American Association of Respiratory Care • American College of Cardiology • American College of Chest Physicians • American College of Physicians • American College of Preventive Medicine • American Heart Association • American Psychological Association • Association of Black Cardiologists • American Society of Internal Medicine • Children's Defense Fund • Community Anti Drug Coalitions of America • Federation of Behavioral, Psychological and Cognitive Sciences • Interreligious Coalition on Smoking or Health • National Association of Children's Hospitals • National Association of County and City Health Officials • National Association of Local Boards of Health • Society for Research on Nicotine & Tobacco • Society of Behavioral Medicine • Summit Health Coalition • The HMO Group

CAMPAIGN for TOBACCO-FREE Kids™

To learn more, call 1-800-284-KIDS
or visit our web site at www.tobaccofreekids.org.

The National Center for Tobacco-Free Kids, 1707 L Street NW, Suite 800, Washington, DC 20036

Congress Must Choose: Big Tobacco or Kids?



The tobacco industry is counting on its friends in Congress to kill or water down tough legislation that would protect kids from tobacco addiction.

America's kids are counting on Congress to do the right thing in this important fight.

Tobacco vs. Kids.
Where America draws the line.

CAMPAIGN FOR TOBACCO-FREE KIDS

To learn more, call 800-284-KIDS
or visit our web site at www.tobaccofreekids.org.

The National Center for Tobacco-Free Kids
1707 L Street NW, Suite 800, Washington, DC 20036

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Exhibit 48

Washington Post A23 5/20
C4 5/17

NAT 6/10 A35
The Hill 6/20 43
5/20 17

Roll Call 6/4/98

Home

CAMPAIGN
for TOBACCO-FREE
Kids

Colorado

Colorado

Colorado

Representative McInnis: Protect Colorado's Kids from Tobacco



Representative
McInnis



The tobacco industry is counting on
Republicans in Congress to kill legislation
that would protect kids from tobacco
addiction.

Representative McInnis, Colorado's
kids are counting on you in this important
fight.

Tobacco vs. Kids,
Where America draws the line.

CAMPAIGN for TOBACCO-FREE Kids

1-800-284-KIDS
or visit our web site at www.tobaccofreekids.org.

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Exhibit 49

Home



Delaware

Senator Roth: Big Tobacco or Kids?

The tobacco industry is counting on Republicans in Congress to kill legislation that would protect kids from tobacco addiction.

Where does Senator Roth stand in this hopes and fight? It's time for him to choose.



Sen. Roth



Tobacco vs. Kids,
Where America draws the line.

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Exhibit 50

Home



Florida

Representative Deutsch: Protect Florida's Kids from Tobacco



The tobacco industry is counting on Congress to kill legislation that would protect kids from tobacco addiction.

Representative Deutsch, Florida's kids are counting on you in this important fight.



Representative Deutsch

Tobacco vs. Kids.
Where America draws the line.

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IS tiquix

Home

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Kids

Print Ad Stories

Illinois

Representative Hastorf: Protect Illinois' Kids from Tobacco



The tobacco industry is recruiting up
Republicans in Congress to kill
legislation that would protect kids from
tobacco addiction.

Representative Hastorf, Illinois' kids
are rushing on you in this
important fight.

Tobacco vs. Kids.
Where America draws the line.



Representative Hastorf

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Exhibit 52

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Print Ad States

Kansas

Senators Brownback and Roberts: Big Tobacco or Kids?

The tobacco industry is counting on Republicans in Congress to kill legislation that would protect kids from tobacco addiction.

Where do Senators Brownback and Roberts stand in this important fight? It's time for them to choose.

Tobacco vs. Kids.
Where America draws the line.

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CAMPAIGN for TOBACCO-FREE Kids™

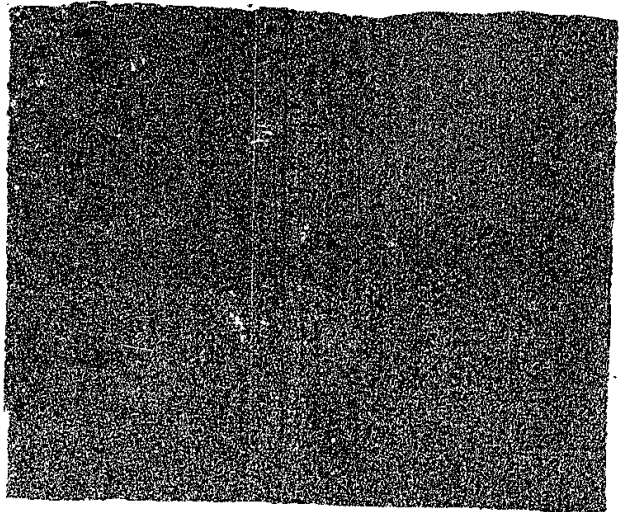
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Exhibit 53

Senators Snooze and Collins: Thank you for standing with McCain's kids not Big Tobacco



The tobacco companies are spending millions of dollars on advertising and lobbying to kill Big Tobacco's McCain anti-tobacco bill. They're countering on the Senate to reject or weaken this legislation.

Made no mistake: a vote by McCain's kids to vote for Big Tobacco's anti-tobacco bill. This bill stops the tobacco companies from marketing and selling their deadly products to children and adolescents a public health crisis.

education campaign to discourage teen smoking. The bill will protect McCain's kids and any other Senator's children and Collins' kids from Big Tobacco. Please tell your Republican leadership to do the same.

**Tobacco vs. Kids.
Where America draws the line.**

Call 1-800-4-A-CHILD to support McCain's kids.

Visit www.tobaccofreekids.org for more information.

The National Cancer Institute, 1707 L Street NW, Suite 500, Washington, DC 20036

Home



Michigan

Representative Upton: Protect Michigan's Kids from Tobacco



The tobacco industry is counting on Republicans in Congress to kill legislation that would protect kids from tobacco addiction.

His Representative Upton, Michigan's kids are counting on you in this important fight.

Tobacco vs. Kids.
Where America draws the line.



Representative Upton

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Missouri 2

Missouri

Senators Bond and Ashcroft: Big Tobacco or Kids?

The tobacco industry is rounding on Republicans in Congress to kill legislation that would protect kids from tobacco addiction.



Where do Senators Bond and Ashcroft stand in this important fight? It's time for them to choose.



Sen. Bond

Tobacco vs. Kids.
Where America draws the line.

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Exhibit 56

Senator Kerry Nebraska's kids are counting on you



Senator Kerry

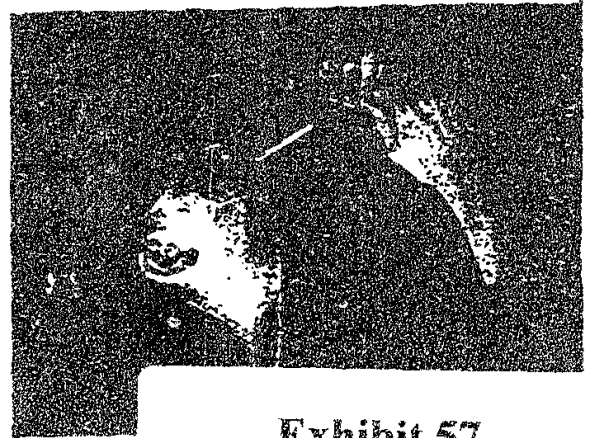
The tobacco companies are spending millions of dollars on advertising and lobbying to kill the tough McCain anti-tobacco bill. They're coming on the Senate to reject or weaken this legislation.

Make no mistake a vote to oppose the McCain bill is a vote for Big Tobacco and against Nebraska's kids. This bill stops the tobacco companies from marketing and selling their deadly product to children and creates a public education

campaign to discourage teen smoking. The bill will protect children and save lives.

Senator Kerry, Nebraska's kids are counting on you to support the McCain bill and stand against Big Tobacco.

Tobacco vs. Kids.
Where America draws the line.



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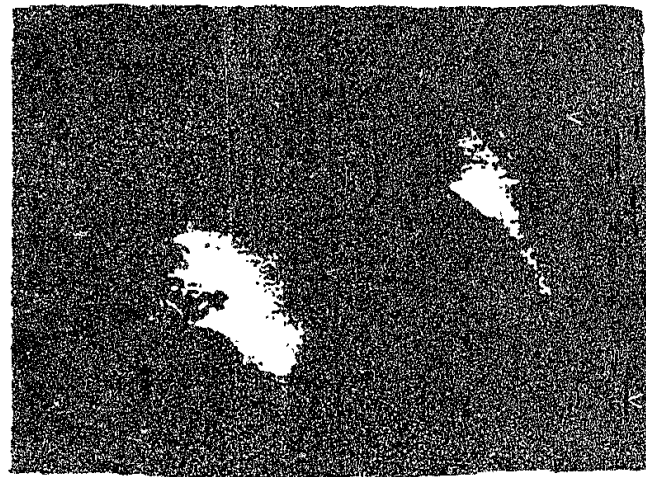
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or visit our web site at www.tobaccofreekids.org
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10/1/98
OMAHA WORLD
HERALD

Senator Tortorelli New Jersey's kids or Big Tobacco?



Senator Tortorelli



The tobacco companies are spending millions of dollars on advertising and lobbying to kill the tough McCain anti-tobacco bill. They're counting on the Senate to reject or weaken this legislation.

Make no mistake: a vote to oppose the McCain bill is a vote for Big Tobacco and against New Jersey's kids. This bill stops the tobacco companies from marketing and selling their deadly product to children and creates a public education

campaign to discourage teen smoking. The bill will protect children and save lives.

Senator Tortorelli, New Jersey's kids are counting on you to support the McCain bill and stand against Big Tobacco.

Tobacco vs. Kids.
Where America draws the line.

CAMPAGNA TO DEFEAT THE KIDS

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DATE

Home

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KIDS

New York 2

New York

Representative Towns: Big Tobacco or Kids?



The tobacco industry is ruminating on Congress to All legislation that would protect kids from tobacco addiction.

What does a Representative Town stand in this important fight? It's time for him to choose.

Tobacco vs. Kids.
Where America draws the line.



Representative Town

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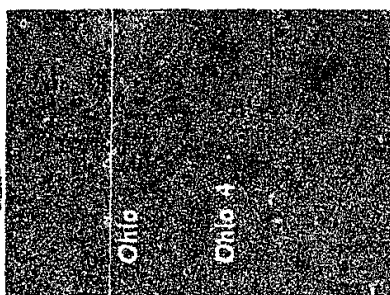
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Exhibit 59

Home



Ohio

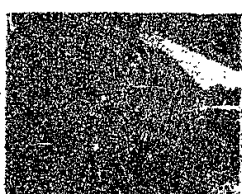
Representative Chabot: Big Tobacco or Kids?



The tobacco industry is counting on Republicans in Congress to kill legislation that would protect kids from tobacco addiction.

Where does Representative Chabot stand in this important fight? It's time for him to choose.

**Tobacco vs. Kids.
Where America draws the line.**



Representative Chabot

American Cancer Society—Ohio Division, Inc. • American Heart Association—Ohio Valley Affiliate
OhioWest Virginia Oncology Society



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Ohio

Ohio 5

Ohio 5

Senator DeWine: Protect Ohio's Kids from TOBACCO

The tobacco industry is counting on
Republicans in Congress to kill
legislation that would protect kids from
tobacco addiction.

Senator DeWine, Ohio's kids are
counting on you in this important fight.

**Tobacco vs. Kids.
Where America draws the line.**

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CAMPAIGN for TOBACCO-FREE Kids

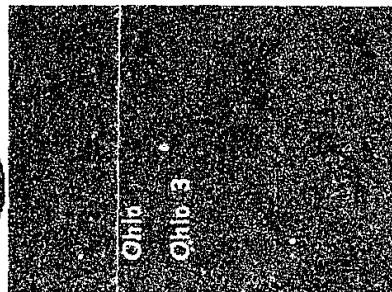
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Exhibit 61

Home



Ohio

Ohio 3

Ohio

Representative Ney: Big Tobacco or Kids?



The tobacco industry is counting on Representatives to Congress to kill legislation that would protect kids from tobacco addiction.

Where does Representative Ney stand in this important fight? It's time for him to choose.

Tobacco vs. Kids.
Where America draws the line.



Representative Ney

American Cancer Society - Ohio Division, Inc. • American Heart Association - Ohio Valley Affiliate
OhioWest Virginia Chesapeake Society

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Home

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Kids

Ohio

Ohio 7

Ohio

Representative Pryce: Protect Ohio's Kids from Tobacco

The tobacco industry is counting on Republicans in Congress to kill legislation that would protect kids from tobacco addiction.

Representative Pryce, Ohio's kids are counting on you in this important fight.

Tobacco vs. Kids,
Where America draws the line.

American Cancer Society—Ohio Division, Inc. • American Liver Association—Ohio Valley Affiliate
OhioWest Virginia Childhood Society

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1000 1/10/97

Pryce
19 x 10.5 in

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More

CAMPAIGN
for
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Kids

Ohio

Ohio 6

Ohio

Representative Strickland: Protect Ohio's Kids from Tobacco

The tobacco industry is counting on Congress to kill legislation that would protect kids from tobacco addiction.

Representative Strickland, Ohio's kids are counting on you in this important fight.

Tobacco vs. Kids.
Where America draws the line.

American Cancer Society—Ohio Division, Inc. • American Heart Association—Ohio Valley Alliance
Ohio West Virginia Technology Society

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Exhibit 64

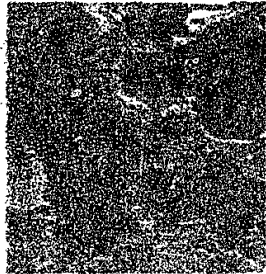
Home

CAMPAIGN
for
TOBACCO-FREE
Kids

Oklahoma
Oklahoma 3

Oklahoma

Representative Coburn: Big Tobacco or Kids?



The tobacco industry is counting on Representative Coburn to fight legislation that would protect kids from tobacco ads like that.

Where does Representative Coburn stand in this important fight? It's time for him to choose.

Tobacco vs. Kids.
Where America draws the line.



Representative Coburn

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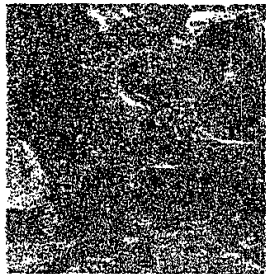
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Home

CAMPAIGN
TOBACCO-FREE
Kids

Pennsylvania

Representative Klink: Protect Pennsylvania's Kids from Tobacco



The tobacco industry is counting on Congress to kill legislation that would protect kids from tobacco addiction.

Representative Klink, Pennsylvania's kids are counting on you in this important fight.

Tobacco vs. Kids.
Whose America draws the line.



Representative
Klink

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Exhibit 66

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for TOBACCO-FREE
Kids

Pennsylvania

Pennsylvania 2

Pennsylvania

Senators Specter and Santorum: Protect Pennsylvania's Kids from Tobacco

The tobacco industry is counting on Republicans in Congress to kill legislation that would protect kids from tobacco addiction.

Senators Specter and Santorum,

Pennsylvania's kids are counting on you in this important fight.

Tobacco vs. Kids.
Where America draws the line.

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Exhibit 67

Home

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Kids

Print Ad States

Texas

Representative Hall: Big Tobacco or Kids?

The tobacco industry is counseling on Congress to kill legislation that would protect kids from tobacco addiction.

Where does Representative Hall stand in this important fight? It's time for him to choose.

Tobacco vs. Kids,
Where America draws the line.

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BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington	MUR 4766
District of Columbia	

AFFIDAVIT OF LANCE IAN MORGAN

LANCE IAN MORGAN, *being first duly sworn deposes and says, to the best of his knowledge and belief:*

1. My name is Lance Ian Morgan and I am currently employed as President of Sawyer Miller Consulting, Washington, D.C., which is a division of BSMG Worldwide Communications Management. I have held that position since 1996, and have been an employee of Sawyer Miller since 1988.

2. BSMG Worldwide's principle business is in the field of public relations consulting and communications.

3. Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R. J. Reynolds Tobacco Company, and United States Tobacco Company (Clients) retained divisions of BSMG Worldwide in January of 1997.

4. In my capacity as President of Sawyer Miller, I have been the project manager over Clients' accounts with divisions of BSMG Worldwide and have been closely involved with all aspects of the production of advertisements on their behalf.

5. Since March of 1998 divisions of BSMG Worldwide have been operating under

instructions from the Clients to produce print, radio and television advertisements for publication by Clients as part of Clients' grassroots effort to educate the public and persuade Members of Congress regarding the public policy issue of federal tobacco legislation.

6. At all times since Clients retained divisions of BSMG Worldwide, Clients have had the sole authority to decide whether to publish all print, radio and television advertisements produced on their behalf by divisions of BSMG Worldwide.

7. Before mid-April of 1998, the content, timing and placement of all advertisements produced by divisions of BSMG Worldwide were designed to educate the public and persuade Members of Congress to support federal tobacco legislation that would resemble the tobacco "Proposed Resolution" and were not designed to affect the outcome of any federal election.

8. Since mid-April of 1998, the content, timing and placement of all advertisements produced by divisions of BSMG Worldwide have been designed to educate the public and persuade Members of Congress to oppose certain proposals for federal tobacco legislation and were not designed to affect the outcome of any federal election.

9. With the exception of the name of Senator McCain, the sponsor of S. 1415, and for whom S. 1415 became known (i.e. the "McCain bill"), and then used only in that regard, none of the advertisements produced by divisions of BSMG Worldwide for publication by Clients have depicted or referred to any candidate for federal office, nor have any of the advertisements contained any language urging the public to vote for or against any candidate or party.

10. The content of all of the advertisements produced by divisions of BSMG Worldwide and published by Clients focus exclusively on the merits of proposed federal

tobacco legislation and clearly identify Clients as having paid for the advertisements.

11. Since Clients decided to publish the first advertisements in March, decisions regarding the content, timing, placement and publication of all of the advertisements through the date of this affidavit, have been made in direct response to Congressional developments regarding federal tobacco legislation.

12. As of the date of this affidavit, Clients have not communicated any decision to divisions of BSMG Worldwide regarding whether they intend to publish any advertisements in the fall.

13. I certify that exhibits 1 through 13, are true and accurate copies of print advertisements produced by divisions of BSMG Worldwide on behalf of Clients that have been published between March of 1998 and August 18, 1998.

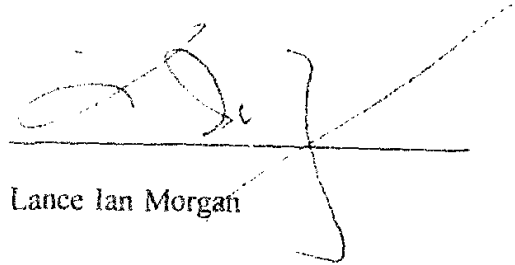
14. I certify that exhibits 14 through 20, are true and accurate scripts of radio advertisements produced by divisions of BSMG Worldwide on behalf of Clients that have been published between March of 1998 and August 18, 1998.

15. I certify that exhibits 21 through 39, are true and accurate scripts of television advertisements produced by divisions of BSMG Worldwide on behalf of Clients that have been published between March of 1998 and August 18, 1998.

16. I certify that exhibits 40 through ^{41, 42, 43} 44, are true and accurate audio recordings of radio advertisements produced by divisions of BSMG Worldwide on behalf of Clients that have been published between March of 1998 and August 18, 1998.


17. I certify that exhibits 42 through 44, are true and accurate video recordings of television advertisements produced by divisions of BSMG Worldwide on behalf of Clients

that have been published between March of 1998 and August 18, 1998.



Lance Ian Morgan

Signed and sworn to before me
on this 17 day August, 1998.


Notary Public
Planchard County, N.H.

My Commission Expires: 4-1-00

Exhibit 70

Audio Tape
"Project Blue : 'Surplus'"

June 30, 1998
African American/Hispanic Radio :60

Woman (VO):

I work hard for my family, but after taxes there isn't much left on payday. . .

And now some Members of Congress are trying to raise more than half a trillion in new tobacco taxes . . .

Almost half of these new taxes will be paid by people earning less than \$30,000 a year . .

Why is it always that working people have to pay the bill?

They say it's to stop kids from using tobacco but they're going to spend a lot of the money on more government bureaucracy . . .

And since they're going to raise the price of cigarettes to more than \$5.00 a pack, there'll be a criminal black market in cigarettes so children will have unregulated access to cigarettes . . .

Those politicians in Washington need to remember who sent them there . . . We don't need any more taxes or crime.

ANNCR (VO): Contact your Member of Congress. Tell them to oppose new tobacco taxes.

Paid for by Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, United States Tobacco Company

July 31, 1998

"Surplus" Radio :60

Woman (V/O)

The politicians are always telling us they're against taxes and for working people.

Well now they have a chance to prove it.

This tobacco tax bill some in Congress are talking about doesn't make any sense.

How is a more than half a trillion dollar tax increase on working people going to stop kids from smoking?

And a recent Congressional Budget Office report projects a 10-year budget surplus of \$1.6 trillion. . .

But some in Washington still want to raise more than \$500 billion in new tobacco taxes.

It doesn't make any sense.

Why does Washington need to raise more taxes for big government when there's a forecast for a huge budget surplus?

Isn't it time to give hardworking Americans a break?

Contact your Member of Congress and tell them to oppose new tobacco taxes. Call 1-800-343-3222.

Paid for by Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, United States Tobacco Company